SUPREME COURT OF THE UNITED STATES.

No. ~~237.~~ 116.

THE BARK SARAH, HER TACKLE, APPAREL, AND CARGO, &c., JOSHUA COUILLARD, CLAIM'T,

vs.

THE UNITED STATES, APP'TS.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

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1 UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 26 day of [SEAL.] December, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the said United States the eighty-seventh.

KENNETH G. WHITE, *Clerk.*

2 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on Monday, the ninth day of September, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE BARK SARAH, her tackle, apparel and furniture, and lading on board. } Vol. 16, page 285.

APRIL 6, 1861.

The libellants file their libel of information in the words and figures following, to wit: To the honorable Samuel R. Betts, judge of the district court of the United States of America for the southern district of New York: The libel of information of E. Delafield Smith, attorney of the United States for the said southern district of New York, who prosecutes for the said United States in this behalf, and being present here in court, in his own proper person, in the name and on behalf of the said United States, against the bark Sarah, her tackle, apparel and furniture, and lading on board, in a case of seizure and forfeiture, alleges as follows:

First. That a certain citizen, or certain citizens, of the United States, a certain foreigner, or some other person, coming into
3 or residing within the same, whose names are as yet to the said attorney unknown, did, for himself or themselves, or for some other person or persons, whose name or names are as yet to the said attorney also unknown, either as master, factor, or owner, heretofore, to wit, on the day of , in the year eighteen hundred and sixty-one, equip, load, and otherwise prepare the aforesaid vessel,

being a bark called "Sarah," within a port or place of the said United States, to wit, the port of New York, and caused the said vessel, being a bark called "Sarah," to sail from a port or place within the same, to wit, from the port of New York aforesaid, for the purpose of carrying on a trade in slaves to some foreign country, to the said attorney as yet also unknown, or for the purpose of procuring from some foreign kingdom, place, or country, to the said attorney as yet also unknown, the inhabitants of such kingdom, place, or country to be transported to some some foreign country, port, or place, to
4 the said attorney as yet also unknown, to be sold and disposed of as slaves, contrary to the first section of the act of Congress approved March the twenty-second, in the year seventeen hundred and ninety-four, entitled "An act to prohibit the carrying on the slave trade from the United States to any foreign place or country."

Second. That after passing the act of Congress approved April 20th, 1818, entitled "An act to prohibit the introduction (importation) of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord one thousand and eight hundred and eight, and to repeal certain parts of the same," to wit, on the day of , in the year eighteen hundred and sixty-one, some citizen, or citizens, of the United States, or some other person or persons, whose name or names are as yet to the said attorney unknown, did, for himself, or for themselves, or for some other person or persons, whose name or names are as yet to the said attorney also unknown, either as master, factor, or owner, fit, equip, load, and otherwise prepare the said vessel,
5 being the bark "Sarah," in a port or place within the jurisdiction of the United States, to wit, the port of New York, in the southern district of New York, and within the jurisdiction of this court, and did cause the said vessel, being the bark "Sarah" aforesaid, to sail from a port or place, to wit, the port of New York aforesaid, within the jurisdiction of the same, for the purpose of procuring certain negroes, mulattoes, and persons of color from some foreign kingdom, place, or country, to the attorney aforesaid unknown, to be transported to some port or place to the said attorney also unknown, to be held, sold, and otherwise disposed of as slaves, and to be held to service and labor, contrary to the second section of the last mentioned act of Congress. And that the said vessel, being the bark "Sarah," did sail from the aforesaid port of New York, within the jurisdiction of the United States, on or about the day of , in the year eighteen hundred and sixty-one, on her aforesaid unlawful voyage, having on board of her lading, consisting of certain merchandize, and other articles herein before referred to, and
6 provisions, and of which a schedule, marked A, is hereto annexed, and to which schedule reference is hereby made as part of this libel.

Third. That the aforesaid vessel, being the bark "Sarah," is now lying in the port of New York, in the district aforesaid, having on board of her the aforesaid merchandize, provisions, and other articles, her aforesaid lading.

Schedule A.

That by reason of the premises, and by virtue o the said board "Sarah," her tackle, apparel and furniture, and lading on board, became forfeited. That all and singular the premises aforesaid are and were true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the said attorney of the United States, on behalf of the said United States, prays the usual process and monition of this honorable court against the said bark "Sarah," and her tackle, apparel and furniture, and lading on board, in this behalf to be made, and that all persons interested in the said bark "Sarah." and her
7 tackle, apparel and furniture, and lading on board, may be cited to answer the premises; and that all due proceedings being had thereon, this honorable court may be pleased to decree for the forfeiture aforesaid, and that the said bark "Sarah," her tackle, apparel and furniture, and lading on board, may be condemned for the use of the United States according to the said acts of Congress, &c.

E. DELAFIELD SMITH,
U. S. Attorney.

Endorsed: 16,285. U. S. Dist. Court. The United States *vs.* The Bark "Sarah," her tackle, &c., and lading. Libel of information.

E. DELAFIELD SMITH,
U. S. Dist. Att'y.

Filed April 6, 1861.

8 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America, to the marshal of the [SEAL.] *southern district of New York, greeting:*

Whereas a libel of information hath been filed in the district court of the United States for the southern district of New York, on the sixth day of April, in the year of our Lord one thousand eight hundred and , by E. Delafield Smith, esquire, U. S. district attorney, on behalf of the United States of America, against the barque Sarah, her tackle, &c., and lading on board, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said bark, her tackle, &c., and lading, may be cited in general and special, to answer the premises, and all proceedings being had that the said bark and tackle, &c., and lading, may, for the causes in the said libel mentioned, be condemned as forfeited to the use of the United States.

You are therefore hereby commanded to attach the said bark, her tackle, &c , and lading, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should be condemned and sold pursuant to the prayer of the said libel, that they be and appear before

the said court, to be held in and for the southern district of New York, on the thirtieth day of April next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this sixth day of April, in the year of our Lord one thousand eight hundred and sixty-one and of our independence the eighty-fifth.

E. DELAFIELD SMITH,
U. S. District Attorney.
GEO. F. BETTS, *Clerk.*

9 In obedience to the within monition, I attached the bark Sarah, her tackle, &c., and lading therein described, on the 15th day of April, 1861, and have given due notice to all persons claiming the same that this court will, on the 30 day of April next, inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

ISAIAH RYNDERS,
Late U. S. Marshal.

Dated 30th April, 1861.

SOUTHERN DISTRICT OF NEW YORK,
United States District Court:

The United States *vs.* The Bark Sarah, her tackle, &c., and lading.

Monition ret'ble 30th April, 1861.

E. DELAFILD SMITH,
U. S. Attorney.

Filed the 30th day of April, 1861.

I hereby depute Joseph Thompson and Rob. Donnell, or either, to execute the within process.

ISAIAH RYNDERS,
U. S. Marshal.

April 6, 1881.

10 U. S. district court.

THE BARK SARAH, her tackle, &c., and lading, *ads.* THE UNITED STATES.

SIR: You will please take notice that we shall apply to this honorable court, on the opening thereof, on the 19th instant, for the

appointment of appraisers to appraise the bark above named, and her lading, pursuant to the rules and practice of the court.

Dated April 18th, 1861.

Yours, &c.,
BEEBE, DEAN & DONAHUE,
Proctors for cl'm't.

To E. DELAFIELD SMITH, Esq.,
U. S. Dist. Att'y.

Endorsed: 16, 285. U. S. dist. court. United States *vs.* Bark Sarah, &c. Notice for appointment of appraisers, &c. Beebe, Dean & Donohue, for cl'm'ts. Service of a copy of the within admitted, dated April 18, 1861. E. Delafield Smith, U. S. dist. att'y, by G. C. Andrews. Filed 19 April, 1861.

11

12 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York, on Friday, the nineteenth day of April, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE BARK SARAH, her tackle, &c., and lading.

On motion of Beebe, Dean & Donohue, proctors for the claimants, it is ordered that Frederick J. W. Barkman, Hiram Bennet, and G. Joseph Ruch be, and they are hereby, appointed appraisers to appraise the value of the bark Sarah, her tackle, &c., and lading.

And it is further ordered that the clerk of this court give notice of the appointment of said Frederick J. W. Barkman, Hiram Bennet, and G. J. Ruch, as such appraisers.

13 Vol. 16, No. 285. United States district court for the southern district of New York. The United States *vs.* The Bark Sarah, her tackle, &c., and lading. Beebe, Dean & Donohue, for cl'm'ts. Order of appointment of appraiser. Filed the 19th day of April, 1861.

14 United States district court, southern district of New York.

THE UNITED STATES
vs.
THE BARK SARAH, her tackle, &c., and lading. } In admiralty.

We, the undersigned, having been appointed appraisers to appraise the value of the bark Sarah, her tackle, &c., and lading, do solemnly swear that we will faithfully appraise the same to the best of our skill and ability.

H. BENNET,
G. JOSEPH RUCH,
F. J. W. BARKMAN.

Subscribed and sworn to this 20th day of April, 1861, before me,
O. R. STEELE,
Notary Public.

Affirmed and subscribed to as to F. J. W. Barkman, this 20th day of April, 1861, before me,
O. R. STEELE,
Notary Public.

15 Vol. 16, page 285. United States district court, southern district of New York. In admiralty. The United States *vs.* The Bark Sarah, her tackle, &c., and lading. Appraisers' oath. Filed April 25th, 1861.

16 United States district court, southern district of New York.

THE UNITED STATES
vs.
THE BARK SARAH, her tackle, &c., and lading. } In admiralty.

We, the undersigned, having been duly appointed and sworn as appraisers to appraise the value of the bark Sarah, her tackle, &c., and lading, do report that we have examined and appraised the said bark and her lading, and do find that the said bark is worth the sum of four thousand dollars, and the lading on board the said bark is worth the sum of twelve thousand eight hundred and eighty-six $\frac{21}{100}$ dollars.

Dated New York, April 21st, 1861.

All which is respectfully submitted.

HIRAM BENNET,
G. JOSEPH RUCH,
F. J. W. BARKMAN.

17 Vol. 16, page 285. United States district court, southern district of New York. In admiralty. The United States *vs.* The Bark Sarah, her tackle, &c., and lading. Appraiser's report. Filed April 25th, 1861.

18 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, on Tuesday the 30th day of April, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The Hon. Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE BARK SARAH. her tackle, &c., and lading. } 16, 285.

The marshal having returned on the monition issued in the above entitled cause, the bark Sarah, her tackle, &c., and lading attached, and that he had not given due notice, &c. Whereupon, Messrs. Beebe,

Dean, and Donohue appear for claimant. And on motion of E. Delafield Smith, esq., United States district attorney, for the libellants, it is ordered that the notice for all persons to appear and *intervene* for their interest in the above entitled cause be published by the marshal until the twenty-first day of May next.

19 Vol. 16, No. 285. United States district court for the southern district of New York. The United States *vs.* The Bark Sarah, &c., and lading. E. Delafield Smith, U. S. at'y, proctor for lib., Beebe, Dean, and Donohue, proctor for cl'm'ts. Return of process, and order published. Filed the 30th day of April, 1861.

20 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on the thirtieth day of April, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES
vs.
THE BARK SARAH, her tackle, &c., and lading.

On motion of E. Delafield Smith, United States district attorney, for the libellants, it is ordered that the notice for all persons to appear and intervene for their interest in the above-entitled cause be published by the marshal until the twenty-first day of May next.

21 Vol. 16, No. 285. United States district court for the southern district of New York. The United States *vs.* The Bark Sarah, her tackle, &c., and lading. Order for publication. Filed the 30th day of April, 1861.

22 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Friday, the third day of May, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Samuel B. Betts, district judge.

THE BARK SARAH, her tackle, &c., and lading,
asm.
THE UNITED STATES.

And now, Joshua Couillard, owner of the bark Sarah, her tackle, &c., and bailee of the lading on board, intervening for the interest of himself, as owner of the bark and bailee of the said cargo, appears before the honorable court, and makes claim to the said bark and lading, &c., as the same are attached by the marshal, under process of this court, at the instance of the United States of America, and the said Joshua Couillard, avers that he *was* in possession of the said bark and lading at the time of the attachment thereof, and that the person above named is the true and *bona fide* owner of the said bark

23 and bailee of said lading, and that no other person is the owner and bailee thereof, as aforesaid; wherefore he prays to defend accordingly.

JOSHUA COUILLARD.

Sworn to and subscribed this 3d day of May, A. D. 1861, before me,
GEO. W. MORTON,
U. S. Commissioner.

BEEBE, DEAN, and DONOHUE,
Proctors for Claimants.

24 *Respondent's costs.*

District court of the United States for the southern district of New York.

Filed the 3 day of May, 1861.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas, a libel was filed in this court on the sixth day of April, in the year of our Lord one thousand eight hundred and sixty-one, by E. Delafield Smith, U. S. district attorney, on behalf of the United States, against the bark Sarah, her tackle, &c., and lading on board, for the reasons and causes in the said libel mentioned, and praying that said bark, her tackle, &c., and lading, may be condemned as forfeited to the United States; and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimant, or his sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands, and whereas, also, a claim has been filed in said cause by Joshua Couillard: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and each of them is, hereby bound in the sum of two hundred and fifty dollars, conditioned that the clam't above named shall pay all costs and charges which shall be awarded against him by the final decree of this court, or upon an appeal, by the appellate court.

JOSHUA COUILLARD,
W. R. BEEBE.

Taken and acknowledged this 3d day of May, 1861, before me,
GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Welcome R. Beebe, party to the above stipulation, being duly sworn, depose and say that he resides in the city of New York; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

W. R. BEEBE.

Sworn to this 3d day of May, 1861, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the 3d day of May, 1861.

G. P. B., *Cl'k.*

25 To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York.

The answer of Joshua Couillard to the libel of information of E. Delafield Smith, attorney for the United States, who prosecutes for the said United States against the bark Sarah, her tackle, apparel and furniture, and lading on board, in a cause of seizure and forfeiture, and thereupon the said Joshua Couillard, intervening for his interest in said bark and cargo, alleges and articulately propounds as follows:

First. That at the times mentioned in the said libel, and at all times since, the respondent was the true and lawful owner of the bark Sarah, her tackle, and that he was and still is the master thereof, and that as such master and owner he was and is the lawful bailee of the cargo laden on board.

Second. This respondent denies each and every allegation of the said libel of information.

Wherefore he prays that this court would be pleased to pronounce against the libel aforesaid, and the said bark Sarah, her tackle, apparel and furniture, and the said ladings on board, with the
26 respondent, may be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSHUA COUILLARD.

Sworn to before me this 3d day of May, 1861.

GEO. W. MORTON,
U. S. Com'r.

Endorsed: 16, 285. U. S. district court. The United States *vs.* The Bark Sarah, her tackle, &c. Answer filed May 3d, 1861.

27 U. S. district court.

THE UNITED STATES
vs.
THE BARK SARAH, her tackle, and lading.

And now E. Delafield Smith, attorney for the said United States, excepts to the competency of the said claim of the said Joshua Couillard, claiming the said bark, &c., and her cargo, and takes issue:

First. To the averment by him, the said Joshua Couillard, that he was in possession of the said bark, &c, and her lading, at the time of the attachment thereof under the process in this action.

Second. To the averment by him, the said Joshua Couillard, that he is the true and *bona fide* owner of the said bark, &c., and that no other person is the owner thereof.

Third. To the averment by him, the said Joshua Couillard, that he is the bailee of said lading, and that no other person is the bailee thereof.

Wherefore he prays that the said claim may be disallowed.

28 E. DELAFIELD SMITH,
U. S. Dist. Att'y.

Endorsed: 16, 285. U. S. dist. court. The United States *vs.* The Bark Sarah, her tackle, &c., and lading. Exceptions to claim. E. Delafield Smith, U. S. dist. att'y. Filed May 11, 1861.

29 *Minutes of testimony.*

THE UNITED STATES
vs.
THE BARK SARAH, her tackle or lading. } Pleadings read.

Preliminary as regards Couillard's ownership.

Sidney L. Morton, affirmed: Am clearance clerk in custom-house, and foreign entry clerk. (Paper exhibit A, shown bill of sale.) Bill of sale from Charles O. Smith to Joshua Couillard, dated 11th March, 1861; acknowledged, April 8, 1861. This is cert. copy of bill of sale. (Ex. B shown.) Register bark Sarah. Original date 11th April, 1861. Joshua Couillard, owner. (Exhibit C shown.) Shipping articles of bark Sarah; a cert. copy, original deposited in our office, Joshua Couillard appears in it as master. (Exhibit D shown.) Crew list of bark Sarah, on this capt. made oath, April 15th, the captain's name never on crew list. (Exhibit E shown.) Certified copy of outward manifest of bark Sarah, certified April 15th.

(Exhibit F shown.) Shippers' manifest dated April 13, 1861.

30 A. F. Arguelles purports to be shipped of cargo. (Exhibit G shown.) Clearance of vessel. Dated April 15, '61. Couillard is master.

(Evidence finished as to Couillard's owner, exception not supported, so decided by court.) Main issue, this evidence all in for it. Main issue, knows persons engaged in the trade to west coast of Africa and to Cape Palmas from this port. Have been clearance clerk and know men in that trade nearly three years.

Ques. Do you know such a person as *as* A. J. Arguelles, engaged in that trade from this port?

[Obj. to.]

A. I do not know any such person; Wood, Niebuhr & Co., cleared the bark Sarah, as brokers; saw Capt. Couillard that day; not personally acquainted with him; had seen him before; don't know how often; perhaps a half a dozen times before.

Cross-examined.

Don't know that I am acquainted with all persons engaged in legitimate trade on coast of Africa. Not probable; don't know anything about outside business of the character of chartering vessels.

Direct.

The number of persons engaged in the legitimate trade on
31 African coast are few; meaning those who do business with me in custom-house; so far as I have become acquainted they are E. R. Ware & Co., Yates, Porterfield & Co., R. P. Buck & Co. These are the principal owners that I recollect at present; I think that Schipller & Co. ship a good many goods to the coast; recollect no others to that part of coast; I refer to Cape Palmas, river Gambia; I can't specify without referring to our book; don't know R. J. Arguelles; never heard of him; clearance for the houses in the legitimate trade are made by Yates, Porterfield & Co., clear their own vessels; R. P. Buck & Co., the same; Wood, Niebuhr & Co. do business for Ware & Co.; Schippler & Co. clear their own goods.

George P. Andrews sworn: Have examined the New York Directory for five years back, from '58 to '62, inclusive; carefully looked for name of Mr. R. F. Arguelles; looked for a similar name also, found none; looked more particularly for name spelt in that way; not so sure about other; looked in two Brooklyn Directories for '55,
32 '6 and '57, '8; found no such name.

Joseph Thompson sworn: Beena Main, (deputy of marshal for last 20 years;) was deputized by Mr. Rynders to seize bark Sarah; I seized her about 15 miles down the bay, on 15th April past, at 6 Narrows; I went down on board steamboat "Only Son;" went on board, brought her to the city, and anchored her off battery. When within about half a mile of vessel, I looked through a spy-glass, and saw several of them examining our vessel; immediately after somebody threw a box overboard, which immediately sunk; it was about 3 × 2 feet in size; was then in pilot-house; on hailing vessel, I proceeded on board, and asked for captain; Captain Couillard came forward, and said he was captain and owner of the vessel; don't see him in court; I told him my business, and showed him the process; he expressed great surprise; said he was going on a legitimate voyage, and had been cleared at custom-house; I then demanded ship's papers, which he
33 handed me; examined them; (identifies ship's papers;) I then returned with vessel's crew and captain to New York; I left the vessel in charge of a ship-keeper; have not examined her cargo; the cargo has been so under marshal's direction; has no remark on appearance; was similar to other vessels attached by me under monition at the suit of the United States; have examined the Kate, leard Josephine, Charlotte E. Day, and other vessels; there were some of them condemned for being in slave trade, and all charged with it; some engaged in that trade are schooners, some barques, some brigs; no known property of vessels necessary. This vessel, I think, about same size as Kate; Maraquite smaller; nothing particular about this vessel; never is in respect to vessel itself; vessels in that trade, some large, and some smaller. Captain said crew was an American crew; there was 9 to 11 of crew on board; a few water casks on board.

Cross-examined.

9 to 11 persons on board; this gentleman on board; (Mr. Stentus;) do not know his name; did not understand he was going out in
34 her. Mr. Couillard has been around here; have seen him several times since vessel seized; have always found large number of casks of water on board of vessels attached for being in the trade, 80 or 90; also lumber, in every instance. In case of the Panchita, Cogswell and others, cargo, &c., same as other. My attention has been called, too, also, so with Ellen; found in them a large quantity of rice, beans. This vessel was like vessels seized by me for wages or other causes; impossible to distinguish them as regards their build and appearance; nothing in size, build, or appearance found in them; I have examined iron pots and boilers; found lime and zeril; followed the vessel in trig; she was towed by a steamboat; steamboat ahead of her; as we went on more directly astern, this box was thrown from the quarter from the right-hand side; could see all that side of vessel; don't know if vessel's decks had been cleared up at time; don't know what box was made of, it sunk suddenly; don't know
35 shapes; had been following for about an hour; this was about two or half past two o'clock; clear going down, coming back it rained; have seen Capt. Cuillard in district attorney's office since; have seen him in every part of building, I believe.

Direct.

When the vessel lay in port, before going, I observed her some time before I went after her, a great many days, off and on for two weeks.

June 12, 1861—Continued.

Luther Horton sworn: Is a deputy marshal; ex'd the cargo of vessel about two weeks ago, after the seizure—entirely taken out and stored in gov't storehouse; was carefully examined; examined the manifest, and compared it with the cargo, it corresponded; (manifest produced, Ex. E.,) it calls for 19,458 gals. oil, casks, shucks. There was that amount of casks, but not that amount of oil, shucks; all the casks would contain the amount called for. The manifest is wrong in calling them all oil casks. The cooper thought about 5,000 gals. was the difference between shucks and oil shucks. Oil casks would hold water as well as oil; all the casks had been used either for
36 water or oil. The stores call for a box or so of crackers; I found a barrel of sea-biscuit on board.

Cross-ex'd.

I could not tell what had been in the casks; there might have been liquor or not.

Knows Mr. Couillard—(testimony of Mr. Thompson, read from com's book, taken before Com'r Carroll May 30th,) admitted as ev. by consent of counsel.

Abraham P. Delano. (Admissions in this matter taken subject to objections, and entire testimony subject to all legal objections.)

I reside in Madison street, No. 209, in this city; have followed the sea. Mr. Miller wanted me to go on the Sarah. Miller boarded at my father's house; Miller came home one rainy day and said he was master of the bark Sarah; wanted to know if I would go and look out for her for a few days for him; told him I would; went on board and stayed there, off and on, for about two weeks; he was there part of the time; this was during the time the vessel was loading. Miller told me he was to go as master; during these two weeks he signed receipts for
37 cargo, and I signed them when he was not there. We both went home at night and took our meals there; he slept there. There was no one there but myself for him to order. The stevedore took charge of the storing; saw Capt. Cuillard there several times; no one there but Miller and myself; never introduced to Cuillard; Miller sent old sails to be repaired; saw the water casks filled, and stowed and lashed; there were about 8 water casks on deck; Miller saw the decks kept clean, and the work generally on deck, and the firewood attended to; the sails properly bended on the yards; he saw to all necessary jobs about the ship properly done. I have been a mate on board a vessel getting ready for sea; seen master on board; Mr. Miller on board acted as captain, mate, and all hands; would not allow me to sign receipts when he was there; he wanted me to go as mate; Miller stated he was going to coast off Africa; he did not state the object of the voyage at that time; at that time he said I should have $45 a month; that is about the usual pay of mates, $40 to $45;
38 I remained on board till Thursday previous to her sailing; she sailed, I think, on Monday ensuing; it was, I suppose, 4 days before; I did not sail with her; Miller wanted me to go as mate then; he afterwards stated that owners of bark had sent a note from Philadelphia, and if he did not take that man as mate he could not go himself; he then wanted me to go as 2d mate; I then thought I might go as 2d mate; I asked where the vessel was going; he said to coast off Africa; I asked if I should sign the ship's articles; he said not yet; kept putting it off; finally brought it down to $25, and he did not give it to me, did not offer it; he gave it to my father; he said to me I suppose you have spent that money; I asked him what money? he said the $25 I gave your father for a month's advance; I told him I had not signed the articles, and asked what he gave the $25 for? he said he signed the articles for me; I told him I was competent to do it if I wanted to; he said he had no 2d mate, and did not want me to disappoint him; I said I had told him I would not go with
39 in her; we had some hard words; I then went home; I left him at pier 46, East river, where the vessel lay; he followed me to father's house, and talked again about my going; tried to induce me to go; told him I would not go on any consideration. I then left him; went to South street to meet a gentleman connected with Mr. Com's office; don't know his name; he asked me if I was going in the bark; told him I was not; asked me how I was to get back the $30 advance he paid to Miller for me; I told him Miller gave me no money!

that he had given my father $25, 1 month advance as 2d mate; he (Mr. Stanhope) then said Miller had not shipped me as 2d mate; that he had shipped me before the mast; that he had given two months' advance, $15 a month; I said Miller was trying to play a double-head game; asked Stanhope to go with me to vessel; he went with me; I told Stanhope my father had paid Miller the $25 back; Miller denied that he had received it back; then admitted he had received
40 the money back; Stanhope asked him for the money; he said he had spent it; couldn't pay him; Stanhope said it was not the right way to do business; Miller said he would pay it another time; Mr. Stanhope then left; I walked to head of pier; Miller came there in a few minutes; Miller wanted me to say to my father that he had received only $25, and not $30; I said I didn't care about it; he asked me to walk with him; went to a restaurant; ordered what we wanted; sat there; he said he wanted me to go in vessel very much; that he was going over to coast of Africa, and wanted me to go as 2d mate; I have charge of the vessel; I knew then that he had shipped me before the mast; I asked him if he wanted to fool me; he repeated he had shipped as 2d mate, *a* $30 a month; previously he had said $25; I said you want to fool me; he said, no I ain't; he wouldn't fool me on my father's account; my father was his friend; I then thought I would go with him; he said if you go with me you will be gone about
41 four months, and have about 3 or $4,000 when you get back; I knew it was a large sum to receive for four months; I so told him; he said you will get your share of the cargo; I said, how is that? he said he was going black-birding; I laughed at him, and said there was no danger about his going; he kept on saying he was going, and tried to induce me by giving his orders to the bar very frequently; he kept on his story; I finally told him I would not go at all; he sometimes said he was going black-birding, and sometimes used the phrase "ebony;" I then left him, saying I did not want anything to do with him, or the vessel either; saw him after that, prior to the sailing of the vessel; he did not renew the subject; I saw him afterwards on board; had no conversation with him; this was the last time I saw him; it was the day the vessel sailed; the conversation in the restaurant was the Thursday previous to the day of sailing; it was about ten o'clock; I saw him on board the vessel; she sailed that day; the next time I saw Miller was the time he was first examined
42 in this case, to wit, May 27th last. On the day the vessel sailed Miller's baggage was put on a dray and sent to vessel; I did not send mine; kept in the house; did not go with the baggage; went down to vessel, and he told me he had received it. Miller told me I was to answer to the name James Comstock on the ship's articles; he did not tell me what his name was to be; that when I went on board I was to answer to the name of Comstock. Mr. Dudger made the complaint against Miller; I was with him; I made an affidavit against Miller; we went to the front door of marshal's office (affidavit against Miller produced;) after Miller's arrest he seemed surprised I should appear against him; I talked with him; he said he had always been a friend to me; I said I did not know that he had been; I told

him, if called as a witness, I should say what he had told me; he said it was hard that I should do so; made no threats; he said my testimony would send him to the wall. A young man, Mr. Baulch, told me it was best I should go out of the country, and not appear
43 against Miller; he didn't want to see him go to the State prison; this occurred about noon on the day of the examination; it was a week ago last Monday (June 5;) Baulch showed me a check for $25; it was signed W. R. Beebe; Baulch said I had better go away, or I should get in trouble; said he had the check, and I had better go away; he said he was going to take some stereoscopic views; that he had previously taken them in the country, and the Appletons would buy them of him; very anxious for me to go with him, and not appear against Miller; he was to give me a percentage on what he made for my assistance; that it was better to go away with him, and it would be worse for me if I appeared against Miller; at first he told me the proceeds of the check would be enough to pay our expense out to the country; I went for my carpet-bag, put some clothes in it; he afterwards said if I wanted 2 or 3 dollars I might have it out of the check; I said I have 3 or 4, you had better hold on to it; we went to J. City, and took tickets for Trenton; was arrested by Sheehan in J. City as
44 a witness before getting on the cars; I left Baulch there; had known Baulch before; Baulch said Miller would give any amount of money to get me out of the way; he said Miller would pay him if he would get me out of the way; I did not go away in consequence of the conversation with Baulch; this was at the time previous to the conversation about the check; have not seen Baulch since June 3rd.

Cross-examined by Judge Beebe.

I arrived 8th November last; I have followed the sea 8 or 9 years; I have been in other business; in my father's timber yard for two or three months altogether; not familiar with the handwriting of the check; never saw the man who wrote it; read it; it was drawn payable to the bearer. Check W. R. Beebe for $25 produced, dated June 3, 1861, drawn payable to bearer. Check admitted as a document, but subject to objection as evidence.

Francis R. Thurber sworn: Am a clerk of Thomas M. wheeler; for 4 years; the cargo of bark was stored in Mr. Wheeler's store; saw the cargo; Mr. W. has stored the cargo of the Kate and other vessels while I was his clerk seized as slave vessels, viz: The
45 Kate, Josephine, and Weathergage; saw the cargo of these vessels, and took account of them; took account of cargoes in some respects resembled each other, and some not.

Martin McDonald sworn: I was deck hand of the Only Son, the tug that went after the Sarah at the time she was seized in this case; when we were about half a mile of her I saw what I supposed a box thrown from her starboard quarter, about three feet by two; it

sunk; could not find it; it sunk immediately; appeared heavy; it was remarked only by those on the tug.

(Obj'd to.)

Cross.

Was not looking through a glass; can't tell the material that it was composed of; it was about 3 feet; can't tell the shape or color of it; it was thrown over on the side plainly visible to me.

The aff't to ground warrent E and H, and warrent to apprehend E and J, offered in evidence.

(Obj. to.)

Daniel Sheehan sworn: Am in the marshal's office; was deputized to arrest a man called Leland Baulch; about a week ago I
46 went to Trenton and Bordentown after him; arrested Delano on previous evening as he was getting on the cars to go with Baulch at the depot; the train started a minute after; had no warrent for Baulch at that time; I did not find Baulch; went to his mother's and to his place of business; I made every effort to arrest him, and did not succeed.

Q. Did you look for Delano?

(Obj. to and a'd by court.)

Had conversation with Miller; it was while in my custody.

Cross-examined.

I took no letter for Mr. Wood or Mr. Baulch; I have heard of such letter; I heard it spoken of, don't know where. (The counsel state a letter was signed by Mr. Beebe and addressed to Wood or Baulch.) Don't know where I heard about it; I think I know who wrote it; I think it was written by a man named Hall; I know him by sight; don't know where he is; am acquainted with him; his name is Charles; is a painter; lives in Madison st., 7th ward.

(Dist. att'y wishes this evidence subject to objection.)

I saw him write it; it was written in his place; all the
47 interest I had in the matter was, I wanted to get Mr. Baulch.

James L. Degraw sworn: Am in the custom-house; am entrance and clearance clerk in naval office; for about 7 years at that desk; have been there 2 or 3 years before I took that desk; am familiar with clearance of vessels and cargoes that have been condemned as being fitted out as slavers, or going to coast of Africa; have examined cargoes and vessels and all manifest of such vessels; it was my official duty to examine the manifests. I examined closely the manifest of the Kate; was on board several times; have been on board the Sarah; have examined the vessel and the manifest; as a general thing there is a similarity in the vessels fitted out for the slave trade, with some few exceptions.

Q. Have they any peculiar characteristics?

(Obj. to.)

A. They resemble in the build, tonnage, and sailing qualities; the

build is clipper, adapted to fast sailing; lofty spars for large amount of canvas; built sharp for fast sailing; the tonnage will average
48 from 200 to a little short of 400 as a general thing.

The Sarah is clipper built, intended for fast sailing; she is registered as 263 tons; her spars are high and light, calculated to carry a press of canvass, and sharp. Have examined the Kate; she resembles very nearly the Sarah in build, and the tonnage very similar; I have never known a vessel engaged in the legal trade to coast of Africa belong to solely to captain, and with few exceptions to other ports; none to Africa. I have known many instances where they were registered to the captain as sole owner if engaged in the slave trade; the principal houses engaged in the legal trade to coast of Africa are E. H. Porterfield & Co., E. R. Ware & Co., James E. Ward, James Bishop & Co.; those are the principal houses; there are a few others, but I would not class them as always engaged in the legal trade; don't know a man "Agelis," or a man engaged in the slave trade of that name; never heard the name till this case; don't know Mr. Couillard; vessels engaged in the legal trade are cleared in the name of the firm; those who are not engaged in the legal
49 trade are cleared in some bogus name, the captain or some one else; in the sale or transfer of such vessels, I notice that there are usually 2 or 3 transfers made previous to the sailing of the vessel; have been on board Josephine and Kate and other vessels seized as slavers; I observed in the Sarah the same peculiarities as in these vessels, especially in sailing qualities.

Q. As to the words black-birding and ebony, (obj. to,) are the word used in the slave trade?

A. They are cant words frequently used by the shipping men and sailors to denote those engaged in the slave trade.

An effort was made to prevent the clearance of this vessel before the seizure by me at the custom-house; the complaint was made after the clearance; after this effort came to dist. att'y's office.

June 13th, 1861.—(Hearing continued.)

Rodman J. Macomber. Has looked in N. Y. city directories carefully for Charles P. Smith for five years; name not there; looked in one Brooklyn directory.

50 James L. DeGraw (continued.) Has examined the "Sarah" since yesterday; examined her carefully outside; the hatches were locked; was on board; examined her facilities for cooking stoves, caboose, &c.; these were very similar to other vessels condemned as slavers; I mean the place for cooking, the gally is the proper term, 19 to 20 ft. long, 5 to 16 ft. wide, just about the size of the one on the "Kate;" there were a number of extra spars on deck; these were also very similar to other vessels condemned as slavers; I refer to Weathergage and Kate; she had two large surf boats, besides the ordinary ship's boats; I mean by a surf boat a boat that resembles a whale boat, sharp at both ends; ex'd the cargo and ship stores on

board to a certain degree; did not examine every package; the peculiarities I observed were 15 or 16 barrels of beef or pork not on manifest; there are no stores on the manifest; there were 16 barrels of bread and 6 of flour; I saw some rice marked for the homeward passage in plain letters, black and very plain; I saw one tierce marked in that way; there might have been others under the cargo;
51 the water casks were done up in shucks, these were designated on manifest as oil casks; are the same style as those on board other vessels as the "Kate;" there were ½ dozen water casks on deck; don't know whether filled or not; have examined the record of this vessel in the custom-house, (taken subject to objection;) no objection to the absence of record, but to the proof of these facts.

Vessel was conveyed by Augustine Hard to C. P. Smith, March 7, 1861; C. P. Smith to Joseph Cuillard, March 11, 1861.

Q. Do you know of any usage peculiar to slave vessels in respect to shipping the crew or part of crew under assumed names?

(Obj. to, and sustained by court in part.)

A. The usage I know is evidence that has been heard in this court, except the case in capt. of Coztea, of the Josephine; I have no particular knowledge; I think the usage is a general one. (His testimony as to the usage obj. to.)

Q. What is the usage?

A. I understand such is the case.

52 Q. What were the facts that led you to oppose the clearance of this vessel?

(Obj. to.)

A. I received notice that there were suspicions against the vessel; that she was probably going in the slave trade; when the persons came to clear the vessel, and the manifest given to me to check, on examination of it, and the usual question, I always asked, "who clears the vessel;" the answer was, the master cleared the vessel; seeing at once that she was not cleared by no regular house in the regular trade, induced me to prevent it; don't know of any C. P. Smith engaged in the trade; have heard of Augustine Hard; don't know him as being in the shipping business.

Cross-examined.

Don't know Mr. C. Donohue as owner or part owner in vessels; don't know Mr. Beebe as such owner or part owner; don't know J. P. Pentz as owner or part owner of such vessels; don't know Mr. Beebe as owner or part owner; don't know Mordecay T. Runyon as owner or part owner; don't know Sam'l C. Melson as owner or part owner; don't know D. Randolph Mullin as owner or part owner;
53 don't know Geo. H. Wells as owner or part owner; don't know Tho. L. Wood as owner or part owner; don't know Edw'd N. Kirk as owner or part owner; been in custom-house about 10 years; have not been in other business, (regular;) have had private business transactions during that time; have not been engaged in legitimate trade on African coast in any way, except in my official capacity; have

never been on coast of Africa; have never fitted a vessel for coast of Africa; have never been engaged in ship-building or as spar or sail-maker; have owned part of a vessel so long ago, in California; don't recollect name; small vessel, 5 or 600 tons; never been to sea except to California, by way of Isthmus; have been 2d officer or clerk on a steamboat, on steamers of Old North river line; clerk on the Ohio, Rob't L. Stevens, and others, many years ago. In case of Kate, Lake was on record as owner; Buck, of Baltimore, had owned her before. In case of Cora, vessel was sold *was sold* by Morgan, through a broker, to Latham; my recollection is, the vessel was conveyed to another before Morgan; I examined part of cargo at time it was taken
54 out of Kate; have examined it also in storehouse; there was considerable lumber, also considerable number of water casks; saw no cask in shooks on board Weathergage; did not see cargo on Kate; were boilers and some cooking apparatus under; might have been lime on her; saw none; think there was extra caboose in Kate; the house on Sarah, called gally, locked up; saw through window; don't know what weight of barrel of bread is; examined shooks this morning; they were in storehouse, with all the cargo; did not see them taken out of vessel; don't know length of mainmast or yards of vessels; don't know length or breadth or depth of vessel. In clearing, persons clearing vessels, they bring the papers to me. If cleared by a broker, he brings the papers to me; papers documentary to clear vessels, not sworn before me, taken before dep'y collector, made out by registry clerk; papers ordinarily come before me, to see if they are correct; if anything suspicious, I report; saw manifest of Kate here; I think I saw one spar on deck of the Sarah, which might be used as mast or yardarm; did not measure it; don't know
55 length; I should suppose it was to use for a mast; were two other spars smaller than first; can't give size; my impression was, they could be used as yards for square sail; were trimmed smooth, and into shipshape; the large one trimmed with square butt end, one end, other end tapered, the other trimmed; the first one fit to be put up as mast, the others fit as yards; the first one butt-squared or eight-sided, to put into the bottom of a vessel; the rest of it planed round; noticed no other preparations; did not stop to see the other spars; did not notice end particularly.

(This witness's testimony subject to legal exceptions.)

William Dodger sworn: Reside in Brooklyn; am a cooper; know David Miller; know him about 2 years; I do ships' coopering, and all kinds; have had conversations with Miller when he first came here to join bark Sarah; think it was at corner of Pine and South streets; did not object to come here; do not want to come often, as I neglect my business by it. In that conversation Miller owed me money; I asked him for it; said he would probably go as mate of bark Sarah,
56 and that he would see me. Told him I was in hurry, and would see him another time. This was all conversation that took place there; don't recollect the time; think it was in April, not since. The next time I saw him I went up there, and he told me as

soon as he got his advance he would settle with me; did not say from what; he told me one time he was going mate, at another as captain; he said the bark was going on trading voyage to African coast, and would probably bring back some negroes; then said she was going on a trading voyage; he told me he could not clear the vessel; another time said he had made it all satisfactory with the marshal, and all was straight, and they were going away, said Marshal Rynders; he owed me money for board, for boots, segars, and cash lent him. This last conversation was in cabin of Sarah; was on deck when he said he couldn't clear her. The day she sailed, after he had been to the custom-house, as he said, might have been 3 or 4 days before she sailed, when he said all was right; Miller was sitting in the
57 cabin, where we were talking together; he came up to the door when I left; saw him on the vessel several times; did not seem to be doing anything; heard him order steward or cook to bring bottle of wine to treat me with; heard him give no other orders; cook or steward brought wine; I never saw him doing anything at any time I was there.

Abner T. Delano recalled.

Mr. Miller said his name was David Reed Miller; I want you to understand, (he said,) that my name is Reed; this was on vessel; this was a day or two after his saying my name was to be Comstock.

Horton recalled.

Looked in hold of this vessel; 2 water casks there, same size as the water casks on deck, carried for immediate use; don't know whether more than four on deck; perhaps may have been six, one was each side of hatch; found the two in hold, when I discharged the vessel, were full of water; these were independent of shooks under cargo, in side of vessel; this was single-decked vessel, clear fore and aft—no bulkhead.

Cross-examined.

These were ordinary water casks; would hold, I should think,
58 180 gallons; water casks usually kept on deck for immediate use.

June 14th, 1861.—(Cause continued.)

Ex. R, copy bill of sale introduced and objected to.

Jos. Lur examined, (subject to exceptions.)

James Lee sworn: Is in marshal's since April; was deputized to execute warrant of arrest against David Reed, *alias* David Reed Miller. (Ex. A shown.) Is warrant under *which* I arrested him; said his name was David Reed Miller; I told him I had a warrant for David Reed Miller; asked him if that was his name; appeared to be surprised at his arrest; said he was mate of the Sarah; saw him

acting in that capacity on board of vessel. I think his arrest was on the 27th of May, the same day warrant was issued; I first saw him on vessel, about a week previous to his *arrest* when cargo was discharged; Miller made no statements then.

Cross-examined.

I arrested him in this building; was not brought here under arrest; heard him say he was attending as a witness.

Sheehan recalled: Have had a subpœna for David Reed Mil-
59 ler; yesterday was put in my hands on behalf of gov't; I think yesterday afternoon; I looked all over; made enquiries; could not find him anywhere; I went to his former residence; I made every exertion to find him; at his former residence I learned that he had not been there for some time; that he went away, and they did not know anything about him; saw 4 or 5 men that knew him; and could not ascertain his whereabouts.

Testimony on part of government closed.

Evidence for claimants.

Fed Fuge sworn: Reside in city of New York; merchant 35 years; firm of P. J. Famon & Co.; we had a branch in Salem one time for many years; have been in African trade since 1832; have not been in for 7 years; have sent, I suppose, fifty cargo's there. (Ex. B shown.) This seems to be all legitimate cargo; I have sent similar lists; nothing important, but what I have sent several times; some trifling exceptions; keg peas, 3 50, &c.; have sent thousands of kegs of gunpowder; sometimes whole cargo's; have sent casks in shooks; in a crew of 12 men to coast wants at least 75 gall. pr. man; 6 casks on deck
60 2 below is to small a quantity; believe reverse would be safer; 3 extra spars none to many; better 4 than 3 for a bark; Cape Palmas well known for legitimate trade; a trading voyage ought to take from 4 to 10 months; 6 or 7 months a fair average; never saw this bark; I have understood that Mr. Mumford was in African trade; Mr. Ingles was in 4 or 5 years; was with me many years; a barrel of bread contains from 100 to 125 lbs.; it varies accoring to character of bread; 16 bbls. bread 6 bbls. flour; I should not last them out; flour would keep longer than rice; flour ought to be good southern flour in order to keep; bread be in liquor casks; in ordinary casks it would last out; rice would keep the whole voyage in tight casks; ordinary would not keep.

Geo. N. Wells sworn: Now in ship store and chandler business; up to first of May was ship broker in African trade; was one of firm of Yates, Porterfield & Co. up to May first; they are in the business, to south and west coast; they have been it since 1854, I think; know firm of R. T. Buck & Co.; familiar with persons in that trade; never heard of R. T. Buck & Co. being in that trade; knows James
61 C. Ward & Co.; never heard of their being in African trade; have been subpœne by United States; think also on other

side; heard Dr. Grau's testimony as regards 2 boats, called serf boats; we always send 1, sometimes 2; are used to carry oil, &c., to and from coasts through serf; sometimes sold there; they are built to order; sharp vessels are more able to compute with the current; we have built two or three vessels for that trade; built them sharp; vessels ought to carry long spars; good for that trade; 3 extra spars nothing unusual on that voyage; think they would answer; if had none on board would take them. (Manifest shown.) We have sent everything here, not excepting wine and preserves; 16 bbls. beef and pork for 12 persons nothing extraordinary on such voyage; there is always good sale on coasts; provision our vessels for out and back voyage; 16 bbls. bread (navy) would not ordinarily weigh from 16 to 1,800 pounds; I think a barrel of flour would fill 2 of bread; 8 water casks not too much; a rule to have part of it below.

Cross-ex'd.

62 Partner of Yates, Porterfield & Co. since 1857; before that was clerk with them, from 1854 or 5 to 1857; have never looked into the way the slave trade is managed on this coast; I was subpœned by defendants.

Thomas Smith sworn: Shipmaster; followed sea for 30 y'rs; master between 23 and 24 y'rs; mate and employed master; know their duties and powers; nothing in their position to give them power to employ or ship men; know Capt. Cuillard for 15 or 20 years; know him as hailing from this port; in different ports.

Cross-examined.

Not common for mate to arrest in shipping men, unless he has orders from the master; not very common for master to give such orders; such a thing might occur, but not common.

Thomas T. Huson sworn: Is stevedore; have been it 15 years; very extensively; 8 to 10 ships at a time; I loaded the Sarah; have never loaded but one other for the coast; Capt. Cuillard employed me; believe he was master and owner; I think we began loading about the 1 March; we completed loading 2 days before she sailed; Mr.
63 Miller was mate; never heard he was master; was called openly the mate; Mr. Miller saw him give some receipts; that is a mate business; sometimes employ a clerk; no part of business of master; I think I saw Capt. Cuillard every day; saw Delano here as witness; have never seen him on dock; never saw him on vessel, or knew he was attached to her; I ought to be familiar with the fitting out of vessels; this bark had, I think, a topsail-yard, spar-topmast, two studding-sail booms; I should think she had not quite enough extra spars; were six casks of water on deck, 2 in fore peak, none in run; the casks on deck were ordinary casks, holding 120 each, below 150 to 200 galls.; this was full short enough; the house called galleys 25 feet long, about 11 or 12 ft. broad; in it a forecastle, which is about 12 ft. long; then comes the galley, about 6 ft. long, right across,

not an extra size; nothing but a regular size; nothing but a regular sized range for cooking; think it the one she had her last voyage; been used; I had full charge loading vessels; water below: put in usual place, aft of the galley; in the house was state-room with 2 berths on one side; on other side a sail-room; all this in that
64 house; had a full set of sails, and nearly one extra suit; studing ones had been used; don't remember seeing any more sails; was nothing on board this vessel that I know more than enough to carry out voyage; single-decked vessel; in the run could scarcely get a barrel; she had lantun (public stone) ballast, then was her main deck, and then bottom of hold; no beams or means of laying another deck; not space to lay another deck; it would be hard; 2 heights of casks fill her; have worked for Harbeck & Co., Neslett & Son, Taylor, Rich & Co., Snow and Purgery; these are the principal ones; have worked for Williams & Guion, Jas. G. Ward & Co., Brookman & Co.; nothing in loading this vessel excited my suspicions; have had vessels larger for Havana; known Capt. Cuillard 8 or 9 years here in N. Y.; he has been master of ships; have known him in Liverpool trade; known his brother here; he is a merchant here.

Cross-ex'd.

The depth of the hold of this vessel was 11 ft., over kelson 9 or 10; don't know her width. I am only guessing at her depth; don't know her length. The diameter of a water cask about two
65 feet; might stow 100 casks in ground tier of this vessel. After stowing ground tier about 4 ft. left to deck; ground tier comes round to wings; with exceptions of cabin and fore peak, clear fore and aft; no bulkhead except a chain-locked one. I believe she had a square stearn; I think have seen the Kate at Atlantic dock; never in her hold; can't tell her capacity by seeing her; she might be deeper. Sometimes master orders mate to get orders from shipping office to give men orders to go there to ship; not common for mate to solicit men to go on board; not done so much as used to do and to be common. The habit of changing orders by the men led to its abandonment.

Geo. W. Stanhope sworn: Clerk for Pentz & Gain; they are shipping notaries; their business very large; ship for most of packet and steamers; shipped this crew with exceptions of one man; Capt. Cuillard directed me; rec'd no authority from him to allow mate to ship any person whatever. The mate signed the articles as David Reed; he told me his name was David Reed Miller, but that when he went in American Eagle he had trouble with the men, and was
66 afraid they would get warrant out for him. I shipped these men for Cape Palmas; had no information at the time the articles were opened that this vessel was going on any but a trading voyage; 2d mate was shipped in our office by directions of Capt.; no agreement that the men were to have anything more than stated on shipping articles; don't think any of the men Portugise or Spanish; not unusual for mates to sign under orders other names than their own; an every day occurance. I think Capt. Cuillard saw none of the

men till they went on board the ship; went down in her; men are mustered on the vessel sometimes not till we get to the Hook, sometimes at dock, sometimes on way down; I go to see that they are sent aboard; I went to get my bill signed; was with Capt. Cuillard all the times except when he went into cabin to get a segar; he then signed my bill; was with him till Mr. Thompson came on vessel; there was a man named Hist, formally on Thurston, came to see me about going as 1st officer; Mr. Miller had then been absent an hour;
67 and supposing he might have gone away, requested him to go along; he was on board at time of seizure; he went out with Hancock; usual to clear up decks going down, throw barrels, &c., overboard; mate forward; Miller came just as ship was hauling out and went on board; know of no box or anything containing anything being thrown overboard; Capt. could not have done so without my seeing it; heard no order to throw anything over; if Capt. had done so, should have heard it; steamer came with marshal afterward; was not looking at her particularly; Capt. Cuillard had a new opera glass; pilot asked for it to use; we were looking through it; knew of no examining steamboat till within a 100 yards, other steamboat sounded; knew of no other passenger on board; think none on tug; took the first tug to take us out; pilot got her; knew Cuillard 8 years in N. Y. as master.

Cross-ex'd.

Know bark Manchester; know Wildflyer; have seen them. My father was Capt. of Wildflyer at one time, she was, I have
68 heard, condemned as a slaver; my father not Capt. then; he took her from here to coast of Africa; from there I believe a Spanish captain took charge of her; I refer to time she was seized; don't think Capt. Cuillard knew Miller before he was shipped; Comstock was the man; I did not ship; shipped all the rest; Miller was on board vessel about 2 weeks before she sailed. I let Miller sign articles on board ship; I think he signed about April 13th; Miller shipped Comstock; he merely put his name down; I took to Miller his advance; saw Delano in court; Mr. Miller, when he signed articles, told me he had a friend named Jas. Comstock, that he wished to go as seaman, and he wished me to bring up advance; I heard that Comstock and Delano were same man; Delano told me so, and was going as mate; after that the mate pointed him out as Comstock.

(Exhibit No. 1, put in.)

Wm. L. Kempton sworn: Am a stevedore; been so for 3
69 years; have loaded vessels for coast; have heard all the fittings of this vessel described; nothing unusual or extra in them, I should think. (Manifest shown.) This is a usual cargo for a trading voyage.

Ezra Marango sworn: Stevedore; followed it 9 years; loaded vessels for coasts; nothing surplus in fittings of this vessel; nothing unusual in this manifest.

Manuel M. Tartada sworn: Reside in this city; been with firm of

John E. Perado; was on a salary; have been on coast of Africa; at one time 15 months; have been there more than once; about 3 times; know Mr. De Medaris; he was Mr. Machado's agent on the coast.

(Admitted by counsel that Machado has consigned goods several times to Medaris, previous to '57.)

Cross-examined.

Don't know that Machado has been engaged in slave trade; was with him; was not engaged with him whilst I was with him; was with him in all from 1850, off and on; was with him from 1850 to 1851, then from '52 or '53 till he failed; was a partner on a
70 salary, from '57, till he stopped in October in that year; my name was in firm, but I had a salary. When it was S. Machado & Co., we had himself, myself, and one other person as partners; clerks besides; Medaris was Machado's agent; don't know that he had anything to do with slave trade.

Tascando Galers sworn: Was in employ of Alranches, Almado & Co., in New York last; know F. J. De Medaris; he is on coast of Africa, in business; was the agent of Alranches, Almado & Co. out there; last saw him here, in March; he came to buy some goods; was introduced to R. J. Arguellis by Mr. Madaris, in New York; he introduced him as his clerk; he left after Madaris did; can't tell the time.

Cross-examined.

Did not know that Arguellis chartered the Sarah last; saw him here between March and April.

John A. Machado affirmed. Up to 1857 was in receiving and
71 commission business, mostly on coast of Africa; had sometimes 10 or 12 vessels at a time in that trade. (Manifest shown.) This is usual cargo for a legitimate business on the coast; know T. J. Medris since '42 or '43; he was my agent on coast for about 4 years; know two Mr. Arguellis who were on the coast.

Welcome R. Beebe sworn: The check of mine given in evidence. Mr. Miller, for whom I appeared, on his arrest, stated that he had no money; was a prisoner, and destitute; had spent his money in going to get bail; wanted me to ask Capt. Cuillard for some for him. I told him I would see the captain; the captain said there was nothing due him, but authorized me to advance him some. A man called on me whom I don't know, and said Miller had sent him to see if I had any money for him. I sent him a check for $25; that is the check.

For the United States.

(Bills of sale marked L and M put in, but obj. to.)

Testimony closed.

73 Shipped in good order and condition, by R. J. Arguellis, on board the bark called the Sarah, whereof Joshua Cuillard is master for this voyage, now lying at the port of New York, and bound for Cape Palmas and a market. To say:

F.—D.	5 bales	[C.]—R P	3 cases	Five bales assorted stripes; four do. do.; fifteen do. do.; ten do. do.
F.—W. B	4 do	H —L. F. C	2 do	Twenty do. do.; six do. do.; ten do. do.; eight do. do.; two do. do.
F.—[S. R.]	15 do	[C.]—L G	2 do	Five do. do.; one case prints; four do. do.; one do. do.; one do. do.
B. H. S.—[C.]	10 do	F. 674	5 do	Five do. do.; three do. do.; ten do. do.; two do. do.; three do. do.; one do. do.
145 F.—G. E C	20 do	[C] 674	1 do	Ten do. muskets; two [4] casks wine; ten bbls. wine, say pork.
W. E	10 do	F —D. M. S	2 do	Twenty-one cases preserves, one do. olives, two do. champagne, three do. codfish, three tins vegatables, two cases liqueurs, three demijohns oil, one keg peas, one case port wine, one do. spikes, one trunk silk handkerchiefs, eleven hhds. tobacco, one hundred and fifty hhds. N. E. rum, one hundred and fourteen bundles oil, shooks, forty bundles iron hoops, one box and keg rivets, being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of Cape Palmas and a market, (the dangers of the seas only excepted,) unto Mers. Franc. Jozé de Hiderras, of Ahghewy, or to his assigns, he or they paying freight for the said mdse, as per charter-party, with primage and average accustomed.
G. E. C.—W. [C.]	6 do	F.—K. 233	3 do	
F.—H. R. A	8 do	[C.]—P. 233	1 do	
H. R. A.—[C.]	2 do	E	10 bbls	
F	5 do	E	10 cases	
O. B. R. T.—B	1 case	E. G	2 casks [4]	
A. W. S	4 do	E. G	21 cases	
146 B —[C]	2 do	E. G	1 do	
B	3 do		2 do	
B	1 do	No mark	114 bundles	
M. S	11 hds	do	40 do	
M. C	150 do	do	1 box	
No mark	3 tins	do		
Do	4 demijohns	do	1 keg	
Do	1 keg.			
Do	1 trunk.			

In witness whereof, the master or purser of the said vessel hath affirmed to five bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in ——, the —— day of ——, 18—.

JOSHUA CUILLARD.

[Ship].

To all to whom these presents shall come, greeting:

Know ye, that I, Charles P. Smith, of the city, county, and State of New York, sole owner of the vessel called the "Sarah," burthen of 263$\frac{4}{5}$ tons. or thereabouts, for and in consideration of the sum of ten thousand dollars, lawful money of the United States of America, to me in hand paid, before the sealing and delivery of these presents, by Joshua Couillard, of the city of Brooklyn, county of Kings, and State of New York, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said Joshua Couillard, executors, administrators, and assigns, the whole of the said bark or vessel, together with the whole, the mast, bowsprit, sails, boat, anchors, cables, and all other necessaries thereto appertaining and belonging; the certificate of the registry of which said bark or vessel is as follows:

76 No. 148.

In pursuance of an act of the Congress of the United States of America, entitled "An act concerning the registering and recording of ships or vessels," Charles P. Smith, of the city, county, and State of New York, having taken or subscribed the oath required by the said act, and having sworn that he is the owner of the ship or vessel called the "Sarah," of New York, whereof is at present master, and is a citizen of the United States, and that the said ship or vessel was built at Scituate, State of Massachusetts, in the year 1854, as per register No. 137, issued at this port March 21st, 1860, now cancelled, property changed; and said register having certified that the said ship or vessel has one deck, and three masts, and that her length is one hundred and three feet, her breadth twenty-five feet, her depth eleven feet three inches, and that she measures two hundred and sixty-three$\frac{4}{95}$ tons, and that she is a bark, has a square stern and figure-head; and the said Charles P. Smith having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said bark has been duly registered at the port of New York.

Given under our hands and seals, at the port of New York, this 11th day of March, in the year one thousand eight hundred and sixty-one.

77 To have and to hold the whole of the bark Sarah, and appurtenances thereunto belonging, unto him, the said Joshua Couillard, his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him, the said Joshua Couillard, executors, administrators, and assigns, forever. And I, the said Charles P. Smith, have, and by these presents do promise, covenant, and agree, for myself, my heirs, executors, and administrators,

to and with the said Joshua Couillard, his heirs, executors, administrators, and assigns, to warrant and defend the said bark Sarah, and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, I, the said Charles P. Smith, have hereunto set my hand and seal this 11th day of March, in the year of our Lord one thousand eight hundred and sixty-one.

[SEAL.] C. P. SMITH.

Sealed and delivered in the presence of—
F. S. GALVAD.
W. S. TAYLOR.

78 CITY AND COUNTY OF NEW YORK, *ss:*

On this 8th day of April, 1861, before me personally came Charles P. Smith, to me known to be the individual in and who executed the above bill of sale, and acknowledged that he executed the same.

[SEAL.] In testimony whereof, I have affixed my seal and signature the day and year above written.

W. S. TAYLOR,
Notary Public.

Recorded April 19th, 1861, at 12, m.

J. B. GREGG, *Clk.*

"Bark Sarah."—Charles P. Smith to Joshua Couillard Registered vessel and bill of sale, dated March 11th, 1861. Exhibit A.

J. B. G. CUSTOM-HOUSE NEW YORK,
Collector's Office.

I certify the within to be a true copy of the original bill of sale on record in this office.

Given under my hand and seal of office this 7th day of June, A. D. 1861.

G. EMBREE,
Deputy Collector.

79 *Register of vessels.*

(ss.) No. 260.

In pursuance of an act of Congress of the United States of America, entitled "An act concerning the registering or recording of ships or vessels," Joshua Couillard, of the city, county, and State of New York,

Briggs Regis er. having taken or subscribed the oath required by the said act, and having sworn that he is the only owner of the ship or vessel called the "Sarah," of New York, whereof Joshua Couillard is at present master, and a citizen of the United States, and that the said ship or vessel was built at Scituate, in the State of Massachusetts, in the year 1854, as per register No. 148, issued at this port March 11th, 1851, now cancelled, property changed;

(ss.) J. White, deputy collector. And said register having certified that the said ship or vessel has one deck, and three masts, and that her length is one hundred and three feet, her breadth thirty-five feet, her depth eleven feet three inches, and that she measures two hundred and sixty-three $\frac{40}{95}$ tons, that she is a bark, has a square stern and figure-head;

And the said Joshua Couillard having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act,

(ss.) the said bark has been duly registered at the port of New York.

Deputy naval officer. Given under our hand and seal, at the port of New York, this eleventh day of April, in the year one thousand eight hundred and sixty-one.

80 Register bark Sarah—263 $\frac{40}{95}$. Ex. C.—Exhibit B.

81 UNITED STATES OF AMERICA:

It is agreed between the master and seamen, or mariners, of the bark Sarah, of New York, whereof Joshua Couillard is at present master, or whoever shall go for master, now bound from the port of New York to Cape Palmas and a market, and it is hereby expressly agreed, that should the said ship on the said voyage be seized, detained, or fined for smuggling tobacco, or any other article, by one or more of the undersigned sailors, cooks, or stewards, they shall all be responsible for the damages thence resulting, and shall severally forfeit their wages, and all their goods and chattels on board to the amount of such damage, and that the certificate of the person or persons who may seize, detain, or fine the said ship for smuggling, signed by him or them, and verified by the American consul at , under his seal of office, shall be conclusive evidence of the facts therein stated, in all courts whatsoever, especially and as to the fact that smuggling had been committed, the individual or individuals by whom the same had been committed, the amount of the fine imposed therefor upon the said ship, the incidental expenses thereon, and the number of days the said ship was detained in consequence thereof. No grog allowed, and none to be put on board by the crew; and no profane language allowed, nor any sheath-knives permitted to be brought or used on board.

That in consideration of the monthly or other wages against each respective seaman or mariner's name hereunder set, they severally shall and will perform the above-mentioned voyage. And the said master doth hereby agree with and hire the said seamen or mariners for the said voyages, at such monthly wages or prices to be paid pursuant to this agreement, and the laws of the Congress of the United States of America; and they, the said seamen or mariners, do severally hereby promise and oblige themselves to do their duty, and obey the lawful commands of their officers on board the said vessel, or the boats thereunto belonging, as become good and faithful seamen or mariners; and at all places where the said vessel shall put in, or anchor at, during the said voyage, to do their best endeavors for the preservation of the said vessel and cargo, and not to neglect or refuse doing their duty by day or night, nor shall go out of the said vessel on board any other vessel, or be on shore, under any pretence whatsoever, until the above said voyage be ended, and the said vessel be discharged of her loading, without leave first obtained of the captain or commanding officer on board; that in default thereof he or they will be liable to all the penalties and forfeitures mentioned in the marine law, enacted for the government and regulation of seamen in the merchants' service, in which it is enacted, "that if any seaman or mariner shall absent himself from on board the ship or vessel, without leave of the master or officer commanding on board, and the mate, or other officer having charge of the log-book, shall make an entry therein of the name of such seaman or mariner on the day on which he shall so absent himself; and if such seaman or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days' pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owner or owners of the said ship or vessel, and moreover shall be liable to pay him or them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place." And it is further agreed, that in case of desertion, death, or imprisonment, the wages are to cease. And it is further agreed, by both parties, that each and every lawful command which the said master or other officer shall think necessary hereafter to issue for the effectual government of the said vessel, suppressing immorality and vice of all kinds, shall be strictly complied with, under the penalty of the person or persons disobeying forfeiting his or their whole wages or hire, together with everything belonging to him or them on board the said vessel. And it is further agreed on, that no officer or seamen belonging to the said vessel shall demand or be entitled to his wages, or any part thereof, until the arrival of said vessel at the said vessel's final port of discharge, and her cargo delivered. And it is hereby further agreed, between the master, officers, and seamen of the said vessel, that whatever apparel, furniture, and stores each of them may

receive into their charge, belonging to the said vessel, shall be accounted for on her return; and in case anything shall be lost or damaged, through their carelessness or insufficiency, it shall be made good by such officer or seaman, by whose means it may happen, to the master and owners of the said vessel. And whereas, it is customary for the officers and seamen, while the vessel is in port, or while the cargo is delivering, to go on shore at night to sleep, greatly to the prejudice of such vessel and freighters, be it further agreed by the said parties, that neither officer nor seaman shall, on any pretence whatever, be entitled to such indulgence, but shall do their duty by day in discharge of the cargo, and keep such watch by night as the master shall think necessary to order relative to said vessel or cargo. And whereas it frequently happens that the owner or captain incurs expenses while in a foreign port, relative to the imprisonment of one or more of his officers or crew, or in the attendance of nurses, or in the payment of board on shore for the benefit of such person or persons, now it is understood and agreed by the parties hereunto, that all such expenditures as may be incurred by reason of the foregoing premises, shall be charged to and deducted out of the wages of any officer, or such one of the crew, by whose means or for whose benefit the same shall have been paid. And whereas it often happens that part of the cargo is embezzled after being safely delivered into lighters, and as such losses are made good by the owners of the vessel, be it therefore agreed by these presents, that whatever officer or seaman the master shall think proper to appoint, shall take charge of her cargo in the lighters, and go with it to the lawful quay, and there deliver his charge to the vessel's husband, or his representative, to see the same safely landed; that each seaman or mariner who shall well and truly perform the above-mentioned voyage (provided always that there be no desertion, plunderage, embezzlement, or other unlawful acts committed on the said vessel's cargo or stores) shall be entitled to the payment of the wages or hire that may become due to him pursuant to this agreement, as to their names is severally affixed and set forth: *Provided, nevertheless,* That if any of the said crew disobey the orders of the said master, or other officer of the said vessel, or absent himself at any time without liberty, his wages due at the time of such disobedience or absence shall be forfeited; and in case such person or persons so forfeiting wages shall be reinstated or permitted to do further duty, it shall not do away with such forfeiture. It being understood and agreed by the said parties, that parol proof of the misconduct, absence, or desertion of any officer or any of the crew of said vessel may be given in evidence at any trial between the parties to this contract, any act, law, or usage to the contrary thereof notwithstanding.

In testimony whereof, and for the due performance of each and every of the above-mentioned articles and agreements, and acknowledgment of their being voluntarily, and without compulsion or any other clandestine means being used, agreed to and signed by us, we have each and every of us hereunto affixed our hands, the month and day against our names as hereunder written.

And it is hereby understood and mutually agreed, by and between the parties aforesaid, that they will render themselves on board the said vessel on or before Saturday, the 13 day of April, 1861, at o'clock in the noon.

Names.	Stations.	Birthplace.	Age.	Height.		Wages per month.	Advance wages.
				Feet.	Inch.		
Joshua Couillard	Captain.						
David Reed	Mate	Ridley, Penn	28	5	6	40	80
Thomas Rowland	2d "	Penn'a	28	5	6	25	50
Thomas Fernan	St'w'd & cook	New York	26	5	6	30	30
James Comstock	Seaman	do	26	5	6	15	30
Thomas Brown	do	do	23	5	6½	15	15
Peter Daniels	do	do	24	5	6	15	15
Geo. Pierce	do	do	25	5	6	15	15
Frank Davis	do	Maryland	30	5	9	15	15
Thomas Davis	do	New Orleans.	23	5	7	15	15
James Cornell	Ord'y	Mass.	21	5	8	13	13
R. W. Stanley	do	do	21	5	9	13	26

DISTRICT AND PORT OF NEW YORK,
Collector's Office, April 15, '61.

I hereby certify the above to be a true copy of the original on file in this office.

J. WHITE, *D. C.*

82 UNITED STATES OF AMERICA:

Acts of the Congress of the United States of America for the government of seamen, merchants, &c., &c.

An act in addition to several acts regulating the shipment and discharge of seaman, and the duties of consuls, passed July 20, 1840.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, as follows:

1. The duplicate list of the crew of any vessel bound on a foreign voyage, made out pursuant to the act of Feb. 28, 1803, shall be a fair copy in one uniform handwriting, without erasure or interlineation.

2. It shall be the duty of the owners of every such vessel to obtain from the collector of the customs of the district from which the clearance is made a true and certified copy of the shipping articles, which shall be written in a uniform hand, without erasure or interlineations, which shall be duly certified as authentic, and containing all the names of the crew borne on the list above named.

3. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, shall be produced by the master, and laid before any consul, or other commercial agent of the United States, whenever he

may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance.

4. All interlineations, erasures, or writing in a hand different from that in which such duplicates were originally made, shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes, and the provisions of the law which guard the rights of mariners.

5. Any consul of the United States, and in case there is none resident at a foreign port, or he is unable to discharge his duties, then any commercial agent of the United States, authorized to perform such duties, may, upon the application of both the master and any mariner of the vessel under his command, discharge such mariner if he thinks it expedient, without requiring the payment of three months' wages under the provisions of the act of 28th February, 1803, or any other sum of money.

6. Any consul or commercial agent may also, on such joint application, discharge any mariner on such terms as will, in his judgment, save the United States from the liability to support such mariner, if the master gives his voluntary assent to such terms, and conform thereto.

7. When a mariner is so discharged the officer discharging him shall make an official entry thereof upon the list of the crew and the shipping articles.

8. Whenever any master shall ship a mariner in a foreign port he shall forthwith take the list of his crew and the duplicate of the shipping articles to the consul, or person who discharges the duties of the office at that port, who shall make the proper entries thereon, setting forth the contract and describing the person of the mariner, and thereupon the bond originally given for the return of the men shall embrace each person shipped.

9. When any mariner shall complain that the voyage is continued contrary to his agreement, or that he has fulfilled his contract, the consul, or other commercial agent performing like duties, may examine into the same by an inspection of the articles of agreement; and if on the face of them he finds the complaint to be well founded, he shall discharge the mariner, if he desires it, and require of the master an advance beyond the lawful claims of such mariner of three months' wages, as provided in the act of February twenty-eight, eighteen hundred and three; and in case the lawful claims of such mariner are not paid upon his discharge, the arrears shall from that time bear an interest of twenty per centum: Provided, however, if the consul or other commercial agent shall be satisfied the contract has expired, or the voyage been protracted, by circumstances beyond the control of the master, and without any design on his part to violate the articles of shipment, then he may, if he deems it just, discharge the mariner without exacting the three months' additional pay.

10. All shipments of seamen made contrary to the provisions of this and other acts of Congress shall be void, and any seamen so shipped

may leave the service at any time, and demand the highest rate of wages paid to any seaman shipped for the voyage, or the sum agreed to be given him at his shipment.

11. It shall be the duty of consuls and commercial agents to reclaim deserters, and discountenance insubordination by every means within their power, and where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner.

12. If the first officer, or any officer, and the majority of the crew of any vessel shall make complaint in writing that she is in an unsuitable condition to go to sea, because she is leaky, or insufficiently supplied with sails, rigging, anchors, or any other equipment, or that the crew is insufficient to man her, or that her provisions, stores, and supplies are not, or have not been during the voyage, sufficient and wholesome, thereupon, in like cases, the consul, or commercial agent who may discharge any duties of a consul, shall appoint two disinterested, competent, practical men, acquainted with maritime affairs, to examine into the causes of complaint, who shall in their report state what defects and deficiencies, if any, they find to be well founded, as well as what in their judgment ought to be done to put the vessel in order for the continuance of the voyage.

13. The inspectors so appointed shall have full power to examine the vessel, and whatever is on board of her, as far as is pertinent to their inquiry, and also to hear and receive any other proofs which the end of justice may require, and if, upon a view of the whole proceedings, the consul or other commercial agent shall be satisfied therewith, he may approve the whole or any part of the report, and shall certify such approval, and if he dissents, shall also certify his reasons for so dissenting.

14. The inspectors in their report shall also state whether, in their opinion, the vessel was sent to sea unsuitably provided in any important or essential particular, by neglect or design, or through mistake or accident; and in case it was by neglect or design, and the consul or other commercial agent approves of such finding, he shall discharge such of the crew as require it, each of whom shall be entitled to three months' pay in addition to his wages to the time of his discharge; but if, in the opinion of the inspector, the defects or deficiencies found to exist have been the result of mistake or accident, and could not, in the exercise of ordinary care, have been known and provided against before the sailing of the vessel, and the master shall in reasonable time remove or remedy the causes of complaint, then the crew shall remain and discharge their duty; otherwise they shall, upon their request, be discharged, and receive each one month's wages in addition to the pay up to the time of discharge.

15. The master shall pay all such reasonable charges in the premises as shall be officially certified to him under the hand of the consul or other commercial agent; but in case the inspectors report that the complaint is without any good and sufficient cause, the master may retain from the wages of the complainants, in proportion to the pay of each, the amount of such charges, with such reasonable dama-

ages or detention on that account as the consul or other commercial agent directing the inquiry may officially certify.

16. The crew of any vessel shall have the fullest liberty to lay their complaints before the consul or commercial agent in any foreign port, and shall in no respect be restrained or hindered therein by the master or any officer, unless some sufficient and valid objection exist against their landing; in which case, if any mariner desire to see the consul or commercial agent, it shall be the duty of the master to acquaint him with it forthwith, stating the reason why the mariner is not permitted to land, and that he is desired to come on board; whereupon it shall be the duty of such consul or commercial agent to repair on board and inquire into the causes of complaint, and to proceed thereon as this act directs.

17. In all cases where deserters are apprehended the consul or commercial agent shall inquire into the facts, and if satisfied that the desertion was caused by unusual or cruel treatment the mariner shall be discharged, and receive, in addition to his wages to the time of the discharge, three months' pay; and the officer discharging him shall enter upon the crew list and shipping articles the cause of discharge, and the particulars in which the cruelty or unusual treatment consisted, and subscribe his name thereto officially.

18. If any consul or commercial agent shall neglect or omit to perform seasonably the duties hereby imposed upon him, or shall be guilty of any malversation or abuse of power, he shall be liable to any injured person for all damage occasioned thereby, and for all malversation and corrupt conduct in office he shall be liable to indictment, and on conviction by any court of competent jurisdiction shall be fined not less than one nor more than ten thousand dollars, and be imprisoned not less than one nor more than five years.

19. If any master of a vessel shall proceed on a foreign voyage without the documents herein required, or refuse to produce them when required, or to perform the duties imposed by this act, or shall violate the provisions thereof, he shall be liable to each and every individual injured thereby, in damages, and shall, in addition thereto, be liable to pay a fine of one hundred dollars for each and every offence, to be recovered by any person suing therefor in any court of the United States in the district where such delinquent may reside or be found.

20. It shall be the duty of the boarding officer to report all violations of this act to the collector of the port where any vessel may arrive, and the collector shall report the same to the Secretary of the Treasury, and to the attorney of the United States in his district.

An act in amendment of the acts for the punishment of offences against the United States, approved March 3, 1835.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any one or more of the crew of any American ship or vessel on the high seas, or on any other waters within the admiralty and maritime jurisdiction of

the United States, shall unlawfully, wilfully, and with force, or by fraud, threats, or other intimidations, usurp the command of such ship or vessel from the master or other lawful commanding officer thereof, or deprive him of his authority and command on board thereof, or resist or prevent him in the free and lawful exercise thereof, or transfer such authority and command to any other person not lawfully entitled thereto, every such person so offending, his aiders or abettors, shall be deemed guilty of a revolt or mutiny and felony, and shall, on conviction thereof, be punished by fine not exceeding two thousand dollars, and by imprisonment and confinement to hard labor not exceeding ten years, according to the nature and aggravation of the offence. And the offence of making a revolt in a ship which now is, under and in virtue of the eighth section of the act of Congress passed the thirteenth day of April, in the year of our Lord one thousand seven hundred and ninety, punishable as a capital offence, shall, from and after the passage of the present act, be no longer punishable as a capital offence, but shall be punished in the manner prescribed in the present act, and not otherwise.

SEC. 2. *And be it further enacted*, That if any one or more of the crew of any American ship or vessel on the high seas, or any other waters within the admiralty and maritime jurisdiction of the United States, shall endeavor to make a revolt or mutiny on board such ship or vessel, or shall combine, conspire, or confederate with any other person or persons on board to make such revolts or mutiny, or shall solicit, incite, or stir up any other or others of the crew to disobey or resist the lawful orders of the master or other officer of such ship or vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust therein, or shall assemble with others in a tumultuous and mutinous manner, or make a riot on board thereof, or shall unlawfully confine the master or other commanding officer thereof, every such person so offending shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding five years, or by both, according to the nature and aggravation of the offence.

SEC. 3. *And be it further enacted*, That if any master or other officer of any American ship or vessel on the high seas, or any other waters within the admiralty or maritime jurisdiction of the United States, shall from malice, hatred, and revenge, and without justifiable cause, beat, wound, or imprison any one or more of the crew of such ship or vessel, or withhold from them suitable food and nourishment, or inflict upon them any cruel and unusual punishment, every such person so offending shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding five years, or by both, according to the nature and aggravation of the offence.

SEC. 4. *And be it further enacted*, That whenever any person indicted for any offence against the United States, whether capital or otherwise, shall upon his arraignment stand mute, or will not plead or answer thereto, it shall be the duty of the court to enter the plea of not guilty on his behalf, in the same manner as if he had pleaded not guilty thereto. And when the party shall plead not guilty, or such

plea shall be entered as aforesaid, the cause shall be deemed at issue, and shall, without further form or ceremony, be tried by a jury. And in all trials in capital cases, if the party indicted shall peremptorily challenge above the number of jurors allowed by law, such excess of challengers shall be disallowed by the court, and the cause shall proceed for trial in the same manner as if the said challenges had not been made.

SEC. 5. *And be it further enacted*, That whenever any person shall be convicted of any offence against the United States which is punishable by fine and imprisonment, or by either, it shall be lawful for the court by which the sentence is passed to order the sentence to be executed in any house of correction, or house of reformation for juvenile delinquents, within the State or district where such court is holden, the use of which shall be allowed and authorized by the legislature of the State for such purpose, and the expenses attendant upon the execution of such sentence shall be paid by the United States.

An act for the government and regulation of seamen in the merchants' service, passed July 20, 1790.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the first day of December next every master or commander of any ship or vessel bound from a port in the United States to any foreign port, or of any ship or vessel of the burthen of fifty tons or upwards bound from a port in one State to a port in any other than an adjoining State, shall, before he proceeds on such voyage, make an agreement in writing, or in print, with every seaman or mariner on board such ship or vessel, (except such as shall be apprentice or servant to himself or owners,) declaring the voyage or voyages, term or terms of time, for which such seaman or mariner shall be shipped. And if any master or commander of such ship or vessel shall carry out any seaman or mariner, (except apprentices or servants as aforesaid.) without such contract or agreement being first made and signed by the seamen and mariners, such master or commander shall pay to every such seaman or mariner the highest price or wages which shall have been given at the port or place where such seaman or mariner shall have been shipped for a similar voyage, within three months next before the time of such shipping: *Provided* such seaman or mariner shall perform such voyage, or if not, then for such time as he shall continue to do duty on board such ship or vessel; and shall moreover forfeit twenty dollars for every such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States; and such seaman or mariner, not having signed such contract, shall not be bound by the regulations, nor subject to the penalties and forfeitures contained in this act.

SECTION 2. *And be it enacted*, That at the foot of every such contract there shall be a memorandum of writing of the day and the hour on which the seaman or mariner who shall ship and subscribe shall ren-

der themselves on board to begin the voyage agreed upon; and if any such seaman or mariner shall neglect to render himself on board the ship or vessel for which he has shipped at the time mentioned in such memorandum, and if the master, commander, or other officer of the ship or vessel shall, on the day on which such neglect happened, make an entry in the log-book of such ship or vessel of the name of such seaman or mariner, and shall in like manner note the time that he so neglected to render himself (after the time appointed,) every such seaman or mariner shall forfeit for every hour which he shall so neglect to render himself one day's pay, according to the rate of wages agreed upon, to be deducted out of his wages; and if any such seaman or mariner shall wholly neglect to render himself on board of such ship or vessel, or, having rendered himself on board, shall afterwards desert and escape, so that the ship or vessel proceed to sea without him, every such seaman or mariner shall forfeit and pay to the master, owner, or consignee of the said ship or vessel a sum equal to that which shall have been paid to him by advance at the time of signing the contract, over and besides the sums so advanced, both which sums shall be recoverable in any court, or before any justice or justices of any State, city, town, or county within the United States, which by the laws thereof have cognizance of debts of equal value against such seaman or mariner, or his surety or sureties, in case he shall have given surety to proceed on the voyage.

SECTION 3. *And be it enacted*, That if the mate, or first officer under the master, and a majority of the crew of any ship or vessel, bound on a voyage to a foreign port, shall, after the voyage is begun, and before the ship or vessel shall have left the land, discover that the said ship or vessel is too leaky, or is otherwise unfit in her crew, body, tackle, apparel, furniture, provisions, or stores, to proceed on the intended voyage, and shall require such unfitness to be inquired into, the master or commander shall, upon the request of the said mate, (or other officer,) and such majority, forthwith proceed to or stop at the nearest or most convenient port or place where such inquiry can be made, and shall there apply to the judge of the district court, if he shall there reside, or if not, to some justice of the peace of the city, town, or place, taking with him two or more of the said crew who shall have made such request; and thereupon such judge or justice is hereby authorized and required to issue his precept, directed to three persons in the neighborhood, the most skilful in maritime affairs that can be procured, requiring them to repair on board such ship or vessel, and to examine the same in respect to the defects and insufficiencies complained of, and to make report to him, the said judge or justice, in writing under their hands, or the hands of two of them, whether in any or in what respect the said ship or vessel is unfit to proceed on the intended voyage, and what addition of men, provisions, or stores, or what repairs or alterations in the body, tackle, or apparel will be necessary; and upon such report the said judge or justice shall adjudge and determine, and shall endorse on the said report his judgment, whether the said ship or vessel is fit to proceed on the intended voyage; if not, whether such repairs can be made,

or deficiencies supplied, where the ship or vessel then lies, or whether it be necessary for the said ship or vessel to return to the port from whence she first sailed, to be there refitted. And the master and crew shall in all things conform to the said judgment; and the master or commander shall, in the first instance, pay all the costs of such view, report, and judgment, to be taxed and allowed, on a fair copy thereof, certified by the said judge or justice; but if the complaint of the said crew shall appear upon the said report and judgment to have been without foundation, then the said master, or the owner or consignee of such ship or vessel, shall deduct the amount thereof and of reasonable damages for the detention, (to be ascertained by the said judge or justice,) out of the wages growing due to the complaining seamen or mariners. And if after such judgment such ship or vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs, or alterations, as may be directed, the said seamen or mariners, or either of them, shall refuse to proceed on the voyage, it shall and may be lawful for any justice of the peace to commit by warrant, under his hand and seal, every such seaman or mariner who shall so refuse to the common jail of the county, there to remain without bail or main-prize until he shall have paid double the sum advanced to him at the time of subscribing the contract for the voyage, together with such reasonable costs as shall be allowed by the said justice, and inserted in the said warrant; and the surety or sureties of such seaman or mariner (in case he or they shall have given any) shall remain liable for such payment, nor shall any such seaman or mariner be discharged upon any writ of *habeas corpus*, or otherwise, until such sum be paid by him or them, or his or their sureties, for want of any form of commitment or other previous proceeding: *Provided* that sufficient matter shall be made to appear upon the return of such *habeas corpus*, and an examination then to be had, to detain him for the causes herein before assigned.

SECTION 4. *And be it enacted*, That if any person shall harbor or secrete any seaman or mariner belonging to any ship or vessel, knowing them to belong thereto, every such person, on conviction thereof before any court in the city, town, or county where he, she, or they may reside, shall forfeit and pay ten dollars for every day which he, she, or they shall continue so to harbor or secrete such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States; and no sum exceeding one dollar shall be recoverable from any seaman or mariner, by any one person, for any debt contracted during the time such seaman or mariner shall actually belong to any ship or vessel, until the voyage for which such seaman or mariner engaged shall be ended.

SECTION 5. *And be it enacted*, That if any seaman or mariner, who shall have subscribed such contract as is herein before described, shall absent himself from on board the ship or vessel in which he shall have so shipped without leave of the master or officer commanding on board, and the mate or other officer having charge of the log-book shall make an entry therein of the name of such seaman or mariner on the day on which he shall so absent himself; and if such seaman

or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days' pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time he shall forfeit all the wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owners of the ship or vessel, and moreover shall be liable to pay to them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place, and such damages shall be recovered with costs in any court, or before any justice or justices, having jurisdiction of the recovery of debts to the value of ten dollars or upwards.

SECTION 6. *And be it enacted*, That every seaman or mariner shall be entitled to demand and receive from the master or commander of the ship or vessel to which they belong one-third part the wages which shall be due to him at every port where such ship or vessel shall unlade and deliver her cargo before the voyage is ended, unless the contrary be expressly stipulated in the contract; and as soon as the voyage is ended, and the cargo or ballast be fully discharged at the last port of delivery, every seaman or mariner shall be entitled to the wages which shall be then due according to his contract; and if such wages shall not be paid within ten days after such discharge, or if any dispute shall arise between the master and the seamen or mariners touching the said wages, it shall be lawful for the judge of the district where the said ship or vessel shall be, or in case his residence be more than three miles from the place, or of his absence from the place of his residence, then for any judge or justice of the peace to summon the master of such ship or vessel to appear before him to show cause why process should not issue against such ship or vessel, her tackle, furniture, and apparel, according to the course of admiralty courts, to answer for the said wages; and if the master shall neglect to appear, or appearing shall not show that the wages are paid or otherwise satisfied, or forfeited, and if the matter in dispute shall not be forthwith settled, in such case the judge or justice shall certify to the clerk of the court of the district that there is sufficient cause of complaint whereon to found admiralty process, and thereupon the clerk of such court shall issue process against the said ship or vessel, and the suit shall be proceeded on in the said court, and final judgment be given according to the course of admiralty courts in such cases used, and in such suit all the seamen or mariners (having cause of complaint of the like kind against the same ship or vessel) shall be joined as complainants; and it shall be incumbent on the master or commander to produce the contract and log-book, if required, to ascertain any matters in dispute, otherwise the complainants shall be permitted to state the contents thereof, and the proof of the contrary shall be on the master or commander; but nothing herein contained shall prevent any seaman or mariner from having or maintaining any action at common law for the recovery of his wages, or for immediate process out of any court having admiralty jurisdiction wherever any ship or vessel may be found, in case she shall have left the port of

delivery where her voyage ended before payment of the wages, or in case she shall be about to proceed to sea before the end of the ten days next after the delivery of her cargo or ballast.

SECTION 7. *And be it enacted*, That if any seaman or mariner, who shall have signed a contract to perform a voyage, shall at any port or place desert, or shall absent himself from such ship or vessel without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of the peace within the United States (upon the complaint of the master) to issue his warrant to apprehend such deserter, and bring him before such justice; and if it shall then appear by due proof that he has signed a contract within the intent and meaning of this act, and that the voyage agreed for is not finished, altered, or the contract otherwise dissolved, and that such seaman or mariner has deserted the ship or vessel, or absented himself without leave, the said justice shall commit him to the house of correction or common jail of the city, town, or place, there to remain until the said ship or vessel shall be ready to proceed on her voyage, or till the master shall require his discharge, and then to be delivered to the said master, he paying all the costs of such commitment, and deducting the same out of the wages due to such seaman or mariner.

SECTION 8. *And be it enacted*, That every ship or vessel belonging to a citizen or citizens of the United States, of the burthen of one hundred and fifty tons or upwards, navigated by ten or more persons in the whole, and bound on a voyage without the limits of the United States, shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and the said medicines shall be examined by the same or some other apothecary once, at least, in every year, and supplied with fresh medicines in the place of such as shall have been used or spoiled, and in default of having such medicine chest so provided, and kept fit for use, the master or commander of such ship or vessel shall provide and pay for all such advice, medicine, or attendance of physicians, as any of the crew shall stand in need of in case of sickness at every port or place where the ship or vessel may touch or trade at during the voyage without any deduction from the wages of such sick seaman or mariner.

SECTION 9. *And be it enacted*, That every ship or vessel belonging as aforesaid, bound on a voyage across the Atlantic ocean, shall at the time of leaving the last port from whence she sails have on board, well secured under deck, at least sixty gallons of water, one hundred pounds of salted flesh meat, and one hundred pounds of wholesome ship bread, for every person on board such ship or vessel, over and besides such other provisions, stores, and live stock, as shall by the master or passengers be put on board, and in proportion for shorter or longer voyages; and in case the crew of any ship or vessel, which shall not have been so provided, shall be put upon short allowance in water, flesh, or bread, during the voyage, the master or owner of such ship or vessel shall pay to each one of the crew one day's wages beyond the wages agreed on for every day they shall be so put to short allowance, to be recovered in the same manner as their stipulated wages.

An act supplementary to the act concerning consuls and vice-consuls, and for the further protection of American seamen, passed February 28, 1803.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That before a clearance be granted to any vessel bound on a foreign voyage the master thereof shall deliver to the collector of the customs a list containing the names, places of birth, and residence, and a description of the persons who compose his ship's company, to which list the oath or affirmation of the captain shall be annexed that the said list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them; and the said collector shall deliver him a certified copy thereof, for which the collector shall be entitled to receive the sum of twenty-five cents; and the said master shall moreover enter into bond, with sufficient security, in the sum of four hundred dollars, that he shall exhibit the aforesaid certified copy of the list to the first boarding officer at the first port in the United States at which he shall arrive at his return thereto, and then and there also produce the persons named therein to the said boarding officer, whose duty it shall be to examine the men with such list, and report the same to the collector; and it shall be the duty of the collector at the said port of arrival (where the same is different from the port from which the vessel originally sailed) to transmit a copy of the list so reported to him to the collector of the port from which said vessel originally sailed: *Provided*, that the said bond shall not be forfeited on account of the said master not producing to the first boarding officer as aforesaid any of the persons contained in the said list, who may be discharged in a foreign country with the consent of the consul, vice-consul, commercial agent, or vice-commercial agent there residing, signified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew as aforesaid, or on account of any such person dying or absconding, or being forcibly impressed into other service, of which satisfactory proof shall be then also exhibited to the collector.

SECTION 2. *And be it enacted,* That it shall be the duty of every master or commander of a ship or vessel belonging to citizens of the United States, who shall sail from any port of the United States after the first day of May next, on his arrival at a foreign port to deposit his register, sea-letter, and Mediterranean passport with the consul, vice-consul, or commercial agent, or vice-commercial agent, (if any there be at such port,) and in case of refusal or neglect of the said master or commander to deposit the said papers as aforesaid he shall forfeit and pay five hundred dollars, to be recovered by the said consul, vice-consul, commercial agent, or vice-commercial agent, in his own name, for the benefit of the United States, in any court of competent jurisdiction; and it shall be the duty of such consul, vice-consul, commercial agent, or vice-commercial agent, on such master or commander producing to him a clearance from the proper officer of the port where his ship or vessel may be, to deliver to the said master or commander all of his said papers: *Provided* such master or commander

shall have complied with the provisions contained in this act, and those of the act to which this is a supplement.

SECTION 3. *And be it further enacted*, That whenever a ship or vessel belonging to a citizen of the United States shall be sold in a foreign country, and her company discharged, or when a seaman or mariner, a citizen of the United States, shall, with his own consent, be discharged in a foreign country, it shall be the duty of the master or commander to produce to the consul, vice-consul, commercial agent, or vice-commercial agent, the list of his ship's company, certified as aforesaid, and to pay to such consul, vice-consul, commercial agent, or vice-commercial agent, for every seaman or mariner so discharged, being designated on such list as a citizen of the United States, three months' pay over above the wages which may then be due to such mariner or seaman, two-thirds thereof to be paid by such consul or commercial agent to each seaman or mariner so discharged upon his engagement on board of any vessel to return to the United States, and the other remaining third to be retained for the purpose of creating a fund for the payment of the passages of seamen or mariners, citizens of the United States, who may be desirous of returning to the United States, and for the maintenance of American seamen who may be destitute, and may be in such foreign port, and the several sums retained for such fund shall be accounted for with the treasury every six months by the persons receiving the same.

SECTION 4. *And be it further enacted*, That it shall be the duty of the consuls, vice-consuls, commercial agents, and vice-commercial agents of the United States from time to time to provide for the mariners and seamen of the United States who may be found destitute within their districts respectively sufficeint subsistence and passages to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give; and that all masters and commanders of vessels belonging to citizens of the United States, and bound to some port of the same, are hereby required and enjoined to take such mariners or seamen on board their ships or vessels at the request of the said consuls, vice-consuls, commercial agents or vice-commercial agents respectively, and to transport them to the port in the United States to which such ships or vessels may be bound, on such terms, not exceeding ten dollars for each person, as may be agreed between the said master and consul or commercial agent; and the said mariners or seamen shall, if able, be bound to do duty on board such ships or vessels according to their several abilities: *Provided*, that no master or captain of any ship or vessel shall be obliged to take a greater number than two men to every one hundred tons burthen of the said ship or vessel on any one voyage; and if any such captain or master shall refuse the same on the request or order of the consul, vice-consul, commercial agent or vice-commercial agent, such captain or master shall forfeit and pay the sum of one hundred dollars for each mariner or seaman so refused, to be recovered for the benefit of the United States in any court of competent jurisdiction; and the certificate of any such consul or commercial agent, given under his hand and

official seal, shall be *prima facie* evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty aforesaid.

SECTION 5. *And be it further enacted*, That the seventh and eighth sections of the act entitled "An act concerning consuls and vice-consuls" be, and the same are hereby, repealed; and that the Secretary of State be authorized to reimburse the consuls, vice-consuls, commmercial agents, or vice-commercial agents, such reasonable sums as they may heretofore have advanced for the relief of seamen, though the same should exceed the rate of twelve cents a man per diem.

SECTION 6. *And be it further enacted*, That it shall and may be lawful for every consul, vice-consul, commercial agent, or vice-commercial agent of the United States to take and receive for every certificate of discharge of any seaman or mariner in a foreign port fifty cents, and for commission on paying and receiving the amount of wages payable on the discharge of seamen in foreign ports two and a half per centum.

SECTION 7. *And be it further enacted*, That if any consul, vice-consul, commercial agent, or vice-commercial agent, shall falsely and knowingly certify that property belonging to foreigners is property belonging to citizens of the United States, he shall, on conviction thereof in any court of competent jurisdiction, forfeit and pay a fine not exceeding ten thousand dollars, at the discretion of the court, and be imprisoned for any term not exceeding three years.

SECTION 8. *And be it further enacted*, That if any consul, vice-consul, commercial agent, or vice-commercial agent, shall grant a passport or other paper certifying that any alien, knowing him or her to be such, is a citizen of the United States, he shall, on conviction thereof in any court of competent jurisdiction, forfeit and pay a fine not exceeding one thousand dollars.

SECTION 9. *And be it further enacted*, That all powers of attorney executed after the thirteenth day of June next, in a foreign country, for the transfer of any stock of the Untted States, or for the receipt of interest thereon, shall be verified by the certificate and seal of a consul, vice-consul, commercial agent, or vice-commercial agent, if any there be at the place where the same shall be executed, for which the person giving the certificate shall receive fifty cents.

We, the undersigned, late mariners on board the , on her late voyage described on the other side of this instrument, and now performed to this place of payment, do hereby, each one for ourselves, with our signatures, acknowledge to have received of , agent or owner of said , the full sum hereunder set against our names, being in full amount of our wages for our services, and all demands for assault and battery, or imprisonment, of whatever name or nature, against said , her owners, or officers, to the day or date hereunder also set against our names.

Names.	Amount.	Amount in writing.	Place and date of payment.	Signatures and seals.	Witness to signing.

Endorsed: Bark Sarah.—Copy articles.—Exhibit C.

84 *List of persons composing the crew of the bark Sarah, of New York, whereof Joshua Couillard is master, bound for Cape Palmas and a market.*

Names.	Places of birth.	Places of residence.	Of what country citizens or subjects.	Age.	Description of their persons.			
					Height.		Complexion.	Hair.
					Feet.	Inches.		
Dav'd Reed	Penn	New York	United States	28	5	6	L't	D'k
Thos. Rowland	do	do	do do	28	5	6	do	do
Thos. Fenian	New York	do	do do	26	5	6	do	do
Jas. Comstock	do	do	do do	26	5	6	D'k	Woolly
Peter Daniels	do	do	do do	24	5	6	L't	Br'wn
Thos. Burn	do	do	do do	23	5	6	do	do
Geo. Pierce	do	do	do do	23	5	6	do	do
F'k Davis	Maryland	do	do do	30	5	9	do	do
Thos. Davis	New Orleans	do	do do	23	5	7	do	do
Jas Crinwell	Mass.	do	do do	21	5	8	do	do
R. U. Stanley	do	do	do do	21	5	9	do	do

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STATE OF NEW YORK, *ss:*

I, public notary, do hereby certify that on the day of the date hereof, before me personally came and appeared master or commander of the now about clearing out for who, being duly sworn, did solemnly and sincerely declare that the above list contains the names of the officers and crew of the said together with the places of their birth and residence, as far as he has been able to ascertain the same.

Given under my hand and seal of office, at the city of New York, this day of 18

85 I, Joshua Couillard, do solemnly, sincerely, and truly swear that the within list contains the names of the crew of the bark Sarah, together with the places of their birth and residences, as far as I can ascertain the same.

JOSHUA COUILLARD.

Sworn this 15th day of April, 1861, before me.

J. WHITE,
D. Collector.

[SEAL] I do certify that the within is a true copy of the list of the crew of the Sarah, of New York, whereof Couillard is master, taken from the original on file in this office.

Given under my hand and seal of office, at the custom-house, this 15th day of April, in the year of our Lord one thousand eight hundred and sixty-one.

I do further certify that the within named persons who compose the company of the above-mentioned bark, whereof Couillard is at present master, have produced to me proof in the manner directed in the act entitled "An act for the relief and protection of American seamen."

And pursuant to the said act, and to the act supplementary to the act concerning consuls and vice-consuls, and for the further protection of American seamen, I do hereby certify that the said persons are citizens of the United States of America.

Given under my hand and seal of office this 15th day of April, 1861.

[SEAL.] J. WHITE, *D. C.*

Endorsed: Sarah.—Crew list.—Exhibit D.

85 *Report and manifest of the cargo laden at the port of New York on board the bark Sarah, whereof Couillard is master, bound for Cape Palmas.*

NEW YORK, *April 13th*, 1861.

Marks.	Numbers.	Packages and contents.	Quantities—Lbs., gallons, &c.	Value of domestic merchandise.	Value of foreign merchandise not dutiable.	Value of foreign merchandise in bond.	Value of foreign merchandise not in bond.	To be landed at—
Various	----------	Eighty five bales } domestics Thirty-one cases }	129,946 yds.	$12,151 03				
B.	----------	Ten bbls. pork	----------	153 25				
F.	----------	Ten cases muskets	----------	540 00				
E G	----------	Two qr. casks wine	46 galls.	----------	----------	----------	$43 70	
E. G	1-21	Twenty-one cases preserves	----------	148 29				
"	----------	One " olives	----------	----------	----------	----------	6 50	
"	----------	Two " champagne	----------	----------	----------	----------	28 00	
B.	----------	Three " codfi-h	----------	22 50				
		Three tins vegetables	----------	11 38				
E. G	----------	Two cases liquors	----------	34 00				
		Four demijohns Spanish oil	8 galls.	16 00				
		One keg peas	----------	3 50				
		One case port wine	----------	----------	----------	----------	16 00	
B.	----------	One " spikes	----------	11 82				
		One trunk silk handkerchiefs	----------	----------	----------	----------	547 20	
W. S.	----------	Eleven hhds. leaf tobacco	205,040 lbs.	2,358 95				
M. C.	----------	One hundred fifty hhds. rum	19,526 gals.	5,271 92				
		Nineteen thousand four hundred forty-eight oil casks, in shooks	----------	527 00				
		One ton iron hoops	----------	80 00				
[G.]	----------	Two hundred lbs. iron rivets	----------	20 00				

DISTRICT AND PORT OF NEW YORK, *Collector's Office, April 15th*, '61.

I hereby certify the above to be a true copy of the original on file in this office.

J. WHITE, *D. C.*

The United States vs. Bark Sarah.

47

1861

Master's oath on clearing outward.

DISTRICT AND PORT OF NEW YORK:

I, master of the
bound from the port of New York to
do solemnly, sincerely, and truly
that the manifest of the cargo on board the said now delivered by me to the collector of this district, and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel, and of the value thereof; and if any other goods, wares, or merchandise shall be laden or put on board the said previous to her sailing from this port, I will immediately report the same to the said collector. I do also that I verily believe the duties on all foreign merchandise, therein specified, have been paid or secured according to law, and that no part thereof is intended to be relanded within the United States; and that if by distress, or other unavoidable accident, it shall become necessary to reland the same, I will forthwith make a just and true report thereof to the collector of the customs of the district wherein such distress or accident may happen. And said cargo is truly intended to be landed in the port of So help me God.

to before me this

Endorsed: Manifest.—Bark Sarah.—Exhibit E.

86 *Manifest of part of cargo shipped by R. J. Argueles, on board the bark Sarah, whereof —— —— is master, for Cape Palmas.*

NEW YORK, *April 13th*, 1861.

Marks.	Numbers.	Packages and contents.	Quantities—Lbs., gallons, &c.	Value of domestic merchandise.	Value of foreign merchandise not dutiable.	Value of foreign merchandise in bond.	Value of foreign merchandise not in bond.	To be landed at—
Sundry		Eighty-five / Thirty-one } domestics	129,946 yd.	$12,151 03				
B		Ten barrels mess pork		133 25				
F		Ten cases muskets		540 00				
E. G		Two qr. casks wine	46 galls.			$43 70		
"	1-21	Thirty-one cases preserves		148 29				
		One " olives				6 00		
"		Two " champagne				28 00		
B		Three " codfish		22 50				
		Three tins vegetables		18 38				
E. G		Two cases liquers		34 06				
		Four demijohns Spanish oil	8 galls.	16 00				
		One keg peas		3 50				
E. G		One case port wine				16 00		
B		One " spikes		11 82				
		One trunk silk handkerchiefs				547 20		
W. S		Eleven hhds. leaf tobacco	20,540 lbs.	2,358 95				
M. C		One hundred fifty hhds. rum	19,526 galls.	5,271 92				
		19,448 gal. oil—casks, in shooks		527 00				
		One case wine hoops		80 00				
[G.]		200 lbs. iron rivets		20 00				

R. J. ARGUELLES.

DISTRICT AND PORT OF NEW YORK:

I, R. I. Arguelles, do solemenly, sincerely, and truly swear, that the within manifest contains a full, just, and true account of all the goods, wares, and merchandise shipped by me on board the within named vessel, and that the quantities and values of each article are truly stated, according to their actual cost, or the values which they truly bear in this port at this time. And I further swear that the said merchandise is truly intended to be exported to Cape Palmas. So help me God.

R. I ARGUELLES.

Sworn to this 13th April, 1861, before me.

J. WHITE,
D. Collector.

Endorsed: Bark Sarah, for Cape Palmas.—Wm. B. Leranton, 13 April, '61.—Exhibit F.

87 DISTRICT AND PORT OF NEW YORK:

These are to certify all whom it may concern that John Couillard, master or commander of the bark Sarah, burthen 263½ tons, or thereabouts, mounted with guns, navigated with 10 men, American built, bound for Cape Palmas, on board merchandise and stores, hath entered and cleared his vessel according to law.

Given under our hands and seals, at the custom-house of New York, this 15th day of April, one thousand eight hundred and sixty-one, and in the eighty-fifth year of the independence of the United States.

General clearance.

J. WHITE, [SEAL.]
D. Collector.

[SEAL.]

J. B. S.,
D'y Naval Officer.

88 LIST OF CONSULAR FEES.

Receiving and delivering ship's papers.

1. For receiving and delivering ship's register and papers, including consular certificates, as prescribed in forms 38 and 39, half a cent on every ton registered measurement of the vessel for which the service is performed.

Discharging or shipping seamen or mariners.

2. For every seaman, from one to ten, who may be discharged or shipped, including the certificates therefor attached to crew lists and shipping articles, to be paid by the master of *the master of* the vessel, fifty cents, but no additional charge shall be made for any number of seaman exceeding ten, who may be discharged from or shipped between the date of the arrival and departure of the vessel.

Protests, passports, &c.

3.	For noting marine protests	$1 00
4.	For extending protest	2 00
	And if it exceed two hundred words, for every additional one hundred words	1 00
5.	For issuing warrant of survey on vessel's hatches, cargoes, provisions, and stores, or either	1 00
89 6.	For a passport, including seal	1 00
7.	For visaing a passport	1 00
8.	For preparing agreement of master to give increased wages to seamen, attested under seal	1 00
9.	For preparing any other official document or instrument of writing not herein named or enumerated, if under one hundred words	1 00
	If exceeding one hundred words, for every additional hundred words	50
10.	For the following certificates of the deposit of a ship's register and papers when required reg. custom-house authorities	25
11.	In cases of vessels deviating from the voyage	50
12.	When ship's register is retained entire in the consulate	25
13.	For master to take home destitute American seaman, no fee.	
14.	Of conduct of crew on board, in cases of refusal of duty, and in cases of imprisonment, &c	25
15.	Given to master at his own request, (for example see form No. 48)	50
16.	To a seaman of his discharge	
17.	Of appointment of new master, including oath of master	1 00
18.	Of the ownership of a vessel	50
90	Of decision and award, in cases of protests against masters, passengers, or crew, (for example see form No. 49)	2 00
20.	Of roll or list of crew when required by the captain or authorities of the port	00
21.	To bill of health	50
22.	To shipping articles	50
23.	Of cancelling ship's register	50
24.	To debenture certificates, including oaths of master and mate	1 25
25.	To invoice, including oath	2 00
26.	To currency	50
27.	Of sea-letter	2 00
28.	Of endorsement of bottomry on ship's register	50
29.	Of ditto on payment of bottomry on ship's register	50
30.	Of ditto of new ownership on ship's register	50

Acknowledgments.

31.	Of the master to bottomry bond	1 00
32.	Of the merchant to the assignment of bottomry bond	1 00

33. Of the vendor to bill of sale of vessel	$1 00
34. Of the master to a mortgage or mortgage bill of sale of vessel	1 00
35. Of the master to an order for payment of seamen's wages, voyages at home, including making up order, if required	50
36. Of one or more persons to a deed or instrument of writing	2 00
37. Of one or more persons to a power of attorney	2 00

Declarations and oaths.

91 38. Of declaration and oath of master to one or more desertions, including oaths attached to crew list, and shipping articles, each	50
39. To one or more deaths or losses of seamen overboard at sea, including oaths attached to crew list, and shipping articles, each	50
40. To not being able to procure two-thirds of a crew of protected American seamen	50
41. To ship's inventories or stores	50
42. To the correctness of log-book	50
43. To ship's bills and vouchers for disbursements and repairs	50

Authenticating copies of papers.

44. Marine note of protest	1 00
45. Of extended protest	2 00
46. Of call, warrant, and report of survey on vessels, hatches, cargo, provisions, and stores, or either, (for example, see form No. 50)	1 00
47. Of inventories and letters, or either of masters	1 00
48. Of account of sales of vessel, cargo, provision, and stores, or either	1 00
49. Of advertisement for funds on bottomry	1 00
50. Of advertisement of sale of vessel or cargo, provisions or stores	1 00

Authenticating signatures.

92 51. To reports of survey on vessel or cargo, provisions, or stores	1 00
52. To estimate of repairs of vessel	1 00
53. To (auctioneers') account of sales of vessel or cargo, provisions or stores	1 00
54. To average bonds	2 00
55. Of governors, judges, notaries public, custom-house, and other officers	2 00
56. Of merchants and individuals	2 00
57. For any other consular certificates or services of like character not herein named or enumerated	50

Consuls' orders and letters.

58.	To send seamen to hospital, no fee.	
59.	To send seamen to prison	$0 50
60.	To release seamen from prison	50
61.	To authorities or captain of the port, in cases of sinking vessels, (for example, see form No. 51)	— 50
62.	Requesting the arrest of seamen	50
63.	For any other order or letter of like character	50

Filing documents in consulate.

64.	Calls of survey on vessel, hatches, cargoes, provisions, and stores, or either	25
65.	Warrants of survey on vessel, hatches, cargoes, provisions, and stores, or either	35
66.	Report of survey on vessel, hatches, cargoes, provisions, and stores, or either.	35
67.	Estimate of repairs of vessels.	25
68.	Consul's certificates to advertisements for funds on bottomry	25
93 69.	To advertisement of sale of vessel, cargo, provisions, and stores, or either	25
70.	Inventories of vessel's cargo, provisions, and stores, or either	25
71.	Letters of masters notifying consul of sale of vessel's cargo, provisions, stores, or either.	25
72.	Of master notifying auctioneer of sale of vessel's cargo, provisions, stores, or either.	25
73.	Account of sale of vessel, cargo, provisions, stores, or either	25
74.	For filing any other document prepared in or out of the consulate.	25

Recording documents.

75.	Calls of surveys on vessels, hatches, cargo, provisions, and stores, and either; warrants and reports of ditto ditto; estimates of repairs; certificates of consuls to advertisements for funds on bottomry, and of sale of vessels; inventories of vessel, cargo, provisions, and stores; letter of master to consul notifying sale of vessel, cargo, provisions, and stores, or either; letter of master to auctioneer, and account of sales of vessel, cargo, provisions, and stores, or either; for every 100 words	20

(As the original documents are required to be filed in the
94 consulate, it will not be necessary to record them. Should it become necessary, however, to deliver up the originals, they must be recorded before delivery, the parties receiving the same paying the record fees as above mentioned.)

76.	Order and consul's certificate to pay seaman's wages on voyage at home	$0 25
77.	Certificate given to master at his own request, when required	25
78.	Appointment of new master	25
79.	Application of a citizen of the United States for a sea letter	25
80.	Sea letter, for every one hundred words	20
81.	Bill of sale when required, for every one hundred words	20
82.	Consul's letter to captain of port or authorities in cases of sinking vessels	25
83.	Consul's certificate to master taking home destitute American seaman	no fee.
84.	Protests of masters and others other than marines; protests, for every one hundred words	20
85.	Average bonds when required, for every one hundred words	20
86.	Powers of attorney when required, for every 100 words	20
87.	Any other document or instrument of writing not herein named or enumerated, prepared in or out of the consulate, and required to be recorded, for every 100 words	20

Estate of deceased American citizens.

88. For taking into possession the personal estate of any citizen who shall die within the limits of a consulate inventorying, selling, and finally settling and preparing or transmitting, according to law, the balance due thereon, five per cent. on the gross amount of such estate shall be delivered over before final settlement, two and one-half per cent. to be charged on the part so delivered over as is not in money, and five per cent. on the gross amount of the residue. If among the effects of the deceased are found certificates of foreign stocks, loans, or other property, two and one-half per cent. on the amount thereof. No charge will be made for placing the official seal upon the personal property or effects of such deceased citizen, or for breaking or removing the seals, when required by the person or persons referred to in section 29 of the act of August 18, 1856.

Miscellaneous services.

89.	For consul's seal and signature to clearance from custom-house authorities	50
90.	For administering oaths not hereinbefore provided for	25
91.	For consul attendance at a shipwreck or for the purpose of assisting a ship in distress, or of saving shipwrecked goods or property over and above traveling expenses, a per diem of four dollars whenever the consul's interposition is required by the parties interested	4 00
92.	For attending an appraisement when the goods or effects are under one thousand dollars in value	3 00

93. For attending valuation of goods of one thousand dollars and upwards in value, for every day's attendance during which the valuation continues..... 5 00
94. For attending sale of goods, if the purchase money be under one thousand dollars..... 3 00
95. For attending sale of goods, if the purchase money is one thousand dollars and upwards, for every day during which the sale continues..... 5 00
96. For attending sale of vessel when required..... 2 00

97 *Fees for unofficial services—perquisites of the consular officers.*

As the unofficial act of a consular officer may be performed by a notary public, and as a compensation charged therefor is regarded as a perquisite of his office, the rate of such compensation may be determined either by agreement or the custom of the place, subject, however, to future instructions.

By order of the President.

W. L. MARCY,
Secretary of State.

98 Endorsed: Bark Sarah, clearance. Exhibit G.]

99 [Eagle.]

The President of the United States of America to the marshal of the United States for the southern district of N. Y., and to his deputies, or any or either of them:

Whereas complaint on oath hath been made to me, charging that David B. Miller, alias David Reed, did, on or about the 16th day of April, in the year one thousand eight hundred and sixty-one, on waters within the admiralty and maritime jurisdiction of the United States, to wit: waters known as the bay of New York, said David R. Miller, alias David Reed, then and there, being a resident within the United States, and a citizen thereof, voluntarily serve on board a vessel of the United States, to wit: the bark called "Sarah," which was then and there employed and made use of in the transportation and carrying of slaves from one foreign country or place to another, and which was then and there employed in the slave trade:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said David R. Miller, alias David Reed, and bring his body forthwith before me, or some judge or justice of the United States, or other United States commissioner, wherever he may be found, that he may then and there be dealt with according to law for the said offence.

100 Given under my hand and seal this 27th day of May, in the year of our Lord one thousand eight hundred and sixty-one, and of our independence the eighty-fifth.

GEO. W. MORTON,
United States Commissioner for the southern district of N. Y.

UNITED STATES DISTRICT ATTORNEY.

U. S. commissioner's court. The United States of America *vs.* David R. Miller, alias David Reed. Warrant to apprehend. E. Delafield Smith, U. S. district attorney. Bail in $3,000.

I hereby depute Jas. Lee to execute the within process. Dated New York, 27th May, 1861.

ROB'T MURRAY,
U. S. Marshal.

The defendant is committed for examination, May 27th, 1861. Bail in $2,000.

GEO. W. MORTON,
U. S. Com'r.

Examination set down 29th, at 12 at noon. G. W. M.

Adj. to 30th, at noon; 30th adj. to June 3d, at 12 at noon.
G. W. M.

June 3d, 1861, witnesses examined; discharged on recognizance until 11 a. m. to-morrow.

GEO. W. MORTON,
U. S. Com'r.

101 [Ship.]

To all whom these presents shall come, greeting:

Know ye, that I, Augustus Heard, jr., of Boston, State of Massachusetts, owner of the bark or vessel called the "Sarah," of the burthen of 263$\frac{4}{95}$, or thereabouts, for and in consideration of the sum of nine thousand two hundred and fifty dollars, lawful money of the United States of America, to me in hand paid before the sealing and delivery of these presents, by C. P. Smith, of the city, county, and State of New York, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said C. P. Smith, or his executors, administrators, and assigns, the whole of the said bark or vessel, together with all and singular the mast, bowsprit, sails, boat, anchors, cables, and all other necessaries thereunto appertaining and belonging; the certificate of the registry of which said bark or vessel is as follows, to wit:

102 No. 137.

In pursuance of an act of the Congress of the United States of America, entitled "An act concerning the registering and recording of ships or vessels," Augustus Heard, jr., of Boston, State of Massachusetts, having taken or subscribed the oath required by the said act, and having sworn that he is the owner of the ship or vessel called the "Sarah," of Boston, whereof Thomas Andrews is at present master,

and is a citizen of the United States, and that the said ship or vessel was built at Scituate, State aforesaid, in the year 1854, as per register 115, issued at this port March 14th, 1860, now cancelled, property changed; and said register having certified that the said ship or vessel has one deck, and three mast, and that her length is one hundred and three feet, her breadth twenty-five feet, her depth eleven feet three inches, and that she measures two hundred and sixty-three $\frac{4}{95}$ tons, and that she is a bark, has a square stern, and a figure-head; and the said Augustus Heard, jr., having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said bark has been duly registered at the port of New York.

Given under our hand and seals, at the port of New York, this 21st day of March, in the year one thousand eight hundred and sixty.

103 And appurtenances thereunto belonging, unto him the said C. P. Smith, or his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him, the said C. P. Smith, or his executors, administrators, and assigns, forever. And I, the said Augustus Heard, jr., have, and by these presents do promise, covenant, and agree, for my heirs, executors, and administrators, to and with the said C. P. Smith, or his heirs, executors, administrators, and assigns, to warrant and defend the said bark "Sarah," and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, I, the said Augustus Heard, jr., have hereunto set my hand and seal, this seventh day of March, in the year of our Lord one thousand eight hundred and sixty-one.

AUGUSTUS HEARD, JR. [SEAL]

Sealed and delivered in the presence of—
GEO. A. WELLS.

104 CITY AND COUNTY OF NEW YORK, *ss:*

On this 7th day of March, 1861, before me personally appeared Augustus Heard, jr., to me known to be the individual described in and who executed the above instrument, and acknowledged that he executed the same.

[SEAL.] GEO. A. WELLS, *Notary Public.*

Recorded March 9th, 1861, at 1 p. m.

Bill of sale from Augustus Heard to C. P. Smith, March 7th, 1861. Exhibit K. (Obj. to.)

CUSTOM-HOUSE, NEW YORK, *Collector's Office.*

I certify the within to be a true copy of the original on record in this office.

Given under my hand and seal of office this 14th day of June, A. D. 1861.

G. W. EMBREE, *Deputy Collector.*

[Ship.]

To all to whom these presents shall come, greeting:

Know ye that I, Edward Livingston, of the city, county, and State of New York, only owner of the bark Sarah, or vessel called the "Sarah," of the burthen of $260\frac{9}{95}$ tons, or thereabouts, for and in consideration of the sum of one dollar, lawful money of the United States of America, to me in hand paid before the sealing and delivery of these presents, by William Wood, of the city, county, and State of New York, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said William Wood, his executors, administrators, and assigns, the whole of the said bark or vessel, together with all and singular the mast, bowsprit, sails, boat, anchors, cable, and all other necessaries thereunto appertaining and belonging; the certificate of the registry of which said bark or vessel is as follows, to wit:

106 No. 233.

In pursuance of an act of Congress of the United States of America, "An act concerning the registering and recording of ships or vessels," Edward Livingston of the city, county, and State of New York, having taken or subscribed the oath required by the said act, and having sworn that he is the only owner of the ship or vessel called the "Sarah," of New York, whereof Charles H. Stevens is at present master, and is a citizen of the United States, and that the said ship or vessel was built at Scituate, State of Massachusetts, in the year 1854, as per register No. 747, issued at New York, Dec. 16th, 1857; and said register having certified that the said ship or vessel has one deck, and three masts, and that her length is 103 feet, her breadth 25 feet, her depth 11 feet 3 inches, and that she measures $260\frac{9}{95}$ tons, and that she is a bark, has a square stern and a figure-head; and the said Edward Livingston having agreed to the description and admeasurement above specified, sufficient security having been given according to the act, the said bark has been duly registered at the port of New York.

Given under our hands and seals, at the port of New York, this 5th day of June, in the year one thousand eight hundred and fifty-seven.

107 And appurtenances thereunto belonging, unto him, the said William Wood, executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him, the said William Wood, executors, administrators, and assigns, forever. And I, the said Edward Livingston, have, and by these presents do promise, covenant, and agree, for myself, my heirs, executors, administrators, to and with the said William Wood, his heirs, executors, administrators, and assigns, to warrant and defend the said bark or vessel, and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, I, the said Edward Livingston, have hereunto set my hand and seal this twenty-third day of January, in the year of our Lord one thousand eight hundred and sixty.

[SEAL.] E. LIVINGSTON.

Sealed and delivered in the presence of—

J. P. GERARD FOSTER.

108 UNITED STATES OF AMERICA,

City, County, and State of New York, ss:

On this twenty-third day of January, 1860, before me, J. P. Gerard Foster, a notary public in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, personally appeared Edward Livingston, to me known to be the same person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

In testimony whereof, I have hereunto set my hand and seal of office the day and year last aforesaid.

[SEAL.] J. P. GERARD FOSTER,
Notary Public.

Bill of sale from Edward Livingston to William Wood, dated January 23, 1860. Exhibit L.

(Obj. to.) Recorded Jan. 23rd, 1860, at 2.10 p. m.

J. B. T. CUSTOM-HOUSE, NEW YORK,
Collector's Office.

I certify the within to be a true copy of the original on record in this office.

Given under my hand and seal of office this 14th day of June, A. D. 1861.

G. W. EMBREE,
Deputy Collector.

109 [Ship.]

To all to whom these presents shall come, greeting:

Know ye, I, William Wood, of the city and State of New York, only owner of the bark or vessel called the "Sarah," of the burthen of 206$\frac{40}{95}$ tons, or thereabouts, for and in consideration of the sum of nine thousand dollars, lawful money of the United States of America, to me in hand paid before the sealing and delivery of these presents, by Augustus Heard, jr., merchant, of Boston, State of Massachusetts, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied, contented, and paid, have bargained, and sold, and by these presents do bargain and sell, unto the said Augustus Heard, jr., of Boston, State of Massachusetts, his executors, administrators, and assigns, the whole of the said bark or vessel, together with all and singular the mast, bowsprit, sails, boat, anchors, cables, and all other

necessaries thereunto appertaining and belonging; the certificate of the registry of which said bark or vessel is as follows, to wit:

110 No. 115.

In pursuance of an act of Congress of the United States of America, entitled "An act concerning the registering and recording of ships or vessels," William Wood, of the city and State of New York, having taken or subscribed the oath required by the said act, and having sworn that he is the only owner of the ship or vessel called the "Sarah," of New York, whereof is at present master, and is a citizen of the United States, and that the said ship or vessel was built at Scituate, State of Massachusetts, in the year 1854, as per register No. 226, issued at this port, April 12th, 1858, now cancelled, property changed; and said register having certified that the said ship or vessel has one deck, and three masts, and that her length is 103 feet, her breadth 25 feet, her depth 11 feet 3 inches, and that she measures 260$\frac{0}{95}$ tons, and that she is a bark, has a square stern, and a figure-head; and the said William Wood having agreed to the description and admeasurement above specified, and sufficient securities having been given according to the said act, the said bark has been duly registered at the port of New York.

Given under our hands and seals, at the port of New York, this 14th day of March, in the year one thousand eight hundred and sixty.

111 And appurtenances thereunto belonging, unto him, the said Augustus Heard, jr., his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him, the said Augustus Heard, jr., his executors, administrators and assigns, forever. And I, the said William Wood, have and by these presents do promise, covenant, and agree, for heirs, executors, and administrators, to and with the said Augustus Heard, jr., his heirs, executors, administrators, and assigns, to warrant and defend the said bark or vessel, and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, I, the said William Wood, have hereunto set my hand and seal this 14th day of March, in the year of our Lord one thousand eight hundred and sixty.

WILLIAM WOOD. [SEAL.]

Sealed and delivered in the presence of—
J. P. GERARD FOSTER.

112 STATE OF NEW YORK, *ss:*

Personally appeared before me, William Wood, to me known to be the same person described in and who executed the within instrument, and acknowledged the within bill of sale to be his free act and deed.

In testimony whereof, I have hereunto set my hand and seal of office this 14th day of March, in the year one thousand eight hundred and sixty. [SEAL.]

J. P. GERARD FOSTER,
Notary Public.

Rec'd March 14, 1860. at 20 m. to 2 p. m.
Bill of sale from William Wood to Augustus Heard, dated March 14th, 1860. Exhibit M. (Obj. to.)

CUSTOM-HOUSE, NEW YORK,
Collector's Office.

I certify the within to be a true copy of the original on record in this office. Given under my hand and seal of office this 14th day of June, A. D. 1861.

G. W. EMBREE,
Deputy Collector.

113 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Monday, the ninth day of September, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Samuel R. Betts, district judge.

THE UNITED STATES,
vs.
THE BARK SARAH, her tackle, &c., and cargo. } 16,285

This case having been heard on the pleadings and process, and on ——, and within arguments by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the above-named bark Sarah, her tackle, apparel, and furniture, and also her cargo, be, and the same is hereby, condemned as forfeited to the use of the United States with costs, to be taxed. And it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court, that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, and that upon the return thereof he distribute the proceeds in satisfaction of this decree.

(Signed,) SAMUEL R. BETTS.

114 Vol. 16, No. 285.

The United States district court for the southern district of New York.

The United States *vs.* The bark Sarah, her tackle, &c., and cargo. E. Delafield Smith, U. S. dist. at'y. Beebe, Dean and Donohue, proctor for cl'm'ts. Decree. Vessel and cargo. Filed the ninth day of September, 1861.

115 U. S. district court.

BARK SARAH and cargo *ads.*
THE UNITED STATES.

Please to take notice that the claimant appeals from the decree herein, and every part thereof.

Dated Sept. 18th, 1861.

Yours, &c., BEEBE, DEAN AND DONOHUE,
For Cl'm'ts.

To GEO. F. BETTS, Esq., *Clerk.*

Endorsed: 16,285. The bark Sarah and cargo *ads.* U. S. No. of appeal. Beebe, Dean and Donohue, for cl'm'ts. Filed 18th Sept., 1861.

116 *To the honorable the circuit court of the United States for the southern district of New York, in the second circuit.*

The petition of appeal of Joshua Couillard, owner of the bark Sarah, her tackle, &c., respectfully shews:

That on the 6th day of April last, 1861, the United States filed their libel in the district court of the United States for the southern district of New York, against the bark Sarah, her tackle, apparel, &c., and the cargo laden on board thereof, setting forth in substance that the said vessel had been fitted out and prepared for the slave trade, and praying that the process might duly issue against said vessel and cargo, and that the same might be condemned and sold; that said libel did allege or state that said vessel had been seized in this district; that process duly issued against said vessel and cargo, and the same was arrested on such process, and that the seizure had been made before the filing of such libel; that the claimant duly appeared as the owner of said vessel, her tackle, and as carrier of the cargo, and put in his answer denying all the allegations of the libel.

That such proceedings were thereupon had that the said
117 cause was tried before the said court on the 17th day of June, 1861, and that on the 9th day of Sept., 1861, following, the said court did order and decree that the said vessel and cargo was forfeited to the use of the United States.

That the appellant alleges and insists that the said decree, and every part thereof, is erroneous and should be reversed, and further, that the district court had no jurisdiction to decree in the premises.

Therefore the appellant prays that the said circuit court may proceed to hear the said cause anew on new pleadings and proofs, to reverse and annul the said decree, and every part thereof, and to restore the claimant to what he has lost in the premises.

BEEBE, DEAN AND DONOHUE,
For Cl'm'ts.

Endorsed: 16,385. U. S. dist. court. Bark Sarah, &c., *ads.* United States. Petition of appeal. Beebe, Dean and Donohue, for app'lt.

I admit due service of a copy of the within, dated Sept. 28, 1861.

E. DELAFIELD SMITH,
U. S. Dist. Att'y.

Filed 28th Sept., 1861.

118 Of the United States of America for the southern district of New York, in the second circuit.

THE UNITED STATES, libellants,
vs.
THE BARK SARAH, &c., Joshua Couillard, claimant for appellant.
} Bond for costs.

Know all men by these presents that I, Charles Donohue, am held and firmly bound unto the above-named libellants in the sum of two hundred and fifty dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 28th day of September, in the year of our Lord one thousand eight hundred and sixty-one.

Whereas the above-named claimant hath prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit, by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect and answer all damages and costs, if he fail to make his appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

C. DONOHUE. [L. S.]

Sealed and delivered, and taken and acknowledged, this 28th day of September, 1861, before me.

JOHN A. OSBORN,
U. S. Com'r.

119 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles Donohue, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

C. DONOHUE.

Sworn to this 28th day of Sept., A. D. 1861, before me.

JOHN A. OSBORN,
U. S. Com'r.

Vol. 16, page 285. U. S. circuit court. The United States, libellants *vs.* The Bark Sarah, &c., Joshua Couillard, cl'm't and appellant. Bond for costs on appeal, Beebe, Dean, and Donohue, cl'mt's proctors. Filed this 28th day of September, 1861. Approved Sept. 28th, 1861. E. Delafield Smith, U. S. dist. att'y. Filed Sept. 28th, 1861.

120 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Thursday, the 21st day of November, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE UNITED STATES
vs.
THE BARK SARAH, her tackle, &c., app't.

The appeal from the district court in this case coming on to be heard—

Mr. Smith is heard on part of libellant.
Mr. Donohue is heard on part of appl't.
Mr. O'Connor is heard on part of appl't.
Cen ado vult.

121 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the sixth day of November, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE UNITED STATES, appellee,
vs.
THE BARK SARAH, her tackle, &c., and cargo, appellant.

This cause having been heard on the pleadings and proofs, and argued by Charles O'Connor, esq., and Charles Donohue for the appellant, and E. Delafield Smith, esq., for the United States, and due deliberation being had, it is now ordered, adjudged, and decreed that the decree of the district court herein be affirmed.

S. NELSON.

Endorsed: U. S. circuit court, United States *vs.* Bark Sarah and cargo, decree. E. Delafield Smith, U. S. att'y. Filed Nov. 8, 1862.

122 *To the honorable the Supreme Court of the United States:*

The petition of appeal of Joshua Couillard, claimant of the bark Sarah, her tackle, apparel, furniture, and cargo, respectfully shows:

That on the 6th day of April, 1861, the United States of America, by their attorney, James I. Roosevelt, esq., filed their libel in the district court of the United States for the southern district of New York, against the said bark Sarah, her tackle, apparel, furniture, and cargo, for the reasons and the causes in the said libel stated, to wit: that the said vessel had been fitted and prepared for the slave trade; and for the said reasons and causes therein stated, praying that the said vessel, her tackle, apparel, furniture, and cargo, might be condemned and forfeited.

That on the 3d day of May, 1861, the claimant,

123 by said vessel, her tackle, apparel, and furniture, and owner of the cargo, intervened for said vessel, her tackle, apparel, furniture, and cargo, and answered said libel, denying all the facts and circumstances stated in the libel.

That the cause was duly tried before said district court; and on the ninth day of September, 1862, the said court did decide and decree that the said vessel, and her tackle, apparel, furniture, and cargo, should be condemned as forfeited to the United States for the causes stated.

That the claimant duly appealed from the said decree to the circuit court of the United States for the southern district of New York in the second circuit; and that the said cause was duly tried and heard by said circuit court; and that after due deliberation the said circuit court, on the 6th day of November, 1862, decided and decreed that the decree should be affirmed.

124 The petitioner claims that the said decree was erroneous, and should be reversed; and the petitioner appeals therefrom to the Supreme Court of the United States, and prays that the said court may proceed to hear anew the said cause, and the pleadings and proofs already taken, and such proofs as may hereafter be taken; and that the court would be pleased to reverse, annul, and altogether hold for nothing the said decree; and that the claimant may be restored to all things which he has lost by means of the premises.

Endorsed: Bark Sarah *ads.* United States. Appeal.

I admit due service of a copy of the within.
Dated Nov. 7, 1862.

E. DELAFIELD SMITH,
U. S. Dist. Atty.

Filed Nov. 8, 1862.

125 Circuit of the United States of America, for the southern district of New York, in the second circuit.

THE BARK SARAH, &c., and cargo, appellant, *ads* THE UFITED STATES, appellee. } Bond for costs.

Know all men by these presents, that we, Joshua Couillard and Robert Porterfield, are held and firmly bound unto the above-named

United States, in the sum of five hundred dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the eighth day of November, in the year of our Lord one thousand eight hundred and sixty-two.

Whereas the above-named Joshua Couillard has prosecuted his appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit, by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named Joshua Couillard shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JOSHUA COUILLARD. [L. S.]
ROBERT PORTERFIELD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 8th day of Nov., 1862, before me.

JOHN A. OSBORN,
U. S. Com'r.

126 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Robert Porterfield, being duly sworn, doth depose and say that he resides at ——; that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

ROBERT PORTERFIELD.

Sworn to this 8th day of Nov., A. D. 1862, before me,
JOHN A. OSBORN,
U. S. Com'r.

Vol. —, page —. U. S. court. Bark Sarah, &c., *ads.* United States. Bond for costs on. Beebe, Dean, and Donohue, proctors. Approved and ordered on file. W. D. Shipman, judge. Filed this 8th day of Nov., 1862.

127 *Citation.*

By the honorable William D. Shipman, one of the judges of the circuit court of the United States, for the southern district of New York, in the second circuit.

To the United States of America:

Whereas Joshua Couillard, claimant of the bark Sarah, her tackle, apparel, &c., and cargo, has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the

second circuit, made in favor of you, the said United States of America, against the said bark Sarah, her tackle, apparel, and cargo, and has filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December, 1862, to do and receive what may appertain to justice to be done in the premises.

128 Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 29th day of October, in the year of our Lord 1862, and of the independence of the United States the eighty-seventh.

W. D. SHIPMAN, *Judge.*

"Endorsed:" Due service of the within is admitted, Nov. 7, 1862.

E. DELAFIELD SMITH,
U. S. Dist. Att'y.

Filed Nov. 8, 1862.

Filed February 10, 1863.

1605

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N. Y.

U. S. Supreme Court,

IN ADMIRALTY—ON APPEAL.

The Bark Sarah, &c.,
Appellant,

vs.

The United States,
Respondent.

Brief for Appellant.

THE PLEADINGS.

The libel seeks the condemnation of the bark *Sarah* and cargo, as forfeited to the United States for violation of the statutes prohibiting the slave trade.

The first count alleges that some person or persons, unknown, did "equip, load, and otherwise prepare," the said vessel in the port of New York, and caused her to sail from said port "for the purpose of carrying on a trade in slaves," contrary to the first section of the act of March 22, 1794. (1 St. at Large, 347.)

The second count alleges that some person or persons, unknown, did "fit, equip, load, and otherwise prepare," the said vessel in the port of New York, and caused her to sail from the port of New York "for the purpose of procuring certain negroes, mulattoes, and persons of color," to be transported, "to be held, sold, and otherwise disposed of as

slaves," contrary to the second section of the act of April 20, 1818. (3 St. at Large, 450.)

Case, fols. 2, 6.

The claim, as owner of vessel and bailee of cargo, was interposed by Joshua Couillard, who was master of the vessel, and in whose possession she and her cargo were when the attachment was issued.

Case, fols. 22, 23.

The answer was put in by said Couillard, owning his title and possession as aforesaid, and denying every allegation of the libel.

Case, fols. 25, 26.

Upon trial had in the District Court, the vessel and cargo were condemned as forfeited.

Case, fols. 113, 114.

Upon appeal to the Circuit Court, this decree was affirmed.

Case, fol. 121.

POINTS.

First Point.—The burden rested upon the United States, as libellants, to show, by affirmative and convincing proof, that the "*Sarah*" and her cargo were, at the time of the attachment, in the predicament of forfeiture.

The weight of this burden, as in all cases resting upon a libellant, is enhanced in this inculpatory proceeding by several plain considerations.

1. The traffic, for participation in which the vessel and cargo are sought to be forfeited, is a heinous offence against common morality and natural law.

2. It is denounced as *piracy*, and so punished, by the laws of the country.

3. For the alleged preparatory steps made the grounds of condemnation in this libel, personal guilt and infamous punishment are, by the statutes, assigned to all concerned, in any degree, in such preparation.

4. The forfeiture itself is severe, reaching to total confiscation of vessel and cargo, if found in the predicament of forfeiture, without measuring the personal share of their owners in the guilty acts or guilty knowledge.

Upon these circumstances, a case of plenary proof is required for the government before condemnation can pass upon the vessels and cargo.

Second Point.—There must be a concurrence of an actual preparation of the voyage of the vessel, with an intent that such voyage shall embrace, in its project, the trade in, or transportation of, slaves.

The acts of preparation, and the guilty project, must both be made out, by proof, beyond a reasonable doubt.

The Emily &. Caroline, 9 *Wheat*, 381, 389.
U. S. vs. *Girding*, 12 *Wheat*, 460, 472.
The Plattsburg, 10 *Wheat*, 133, 140.
Schooner Catherine, 2 *Paine*, 751.

Third Point.—Upon the proofs, the United States have wholly failed to maintain the forfeiture claimed.

I. The vessel and cargo, upon the strictest scrutiny, and explored only in the light of the evidence for the government, exhibit no trait or trace of preparation for traffic in, or transportation of, slaves.

II. The documents of the voyage, the bill of lading, the crew list, the manifest, the register, the clearance, are equally free from any taint of guilt.

III. That the intent or project of the voyage, though its actual preparation was innocent on its face, included a secret and separate design, that the vessel might or should, in the future, engage in this nefarious traffic, rests for its proof, confessedly, upon the reported, casual, loose and obscure hints, of the mate Miller, to one of the seaman, before the vessel sailed.

This evidence is found at fol. 40, 42, and the loose, sailor talk, which gained no credence, at the time, with the seaman, to whom it was address ed, seems to be the length, and breadth, and depth, of the case of the government, as to actual guilty purpose in the projected voyage.

Fourth Point.—But the evidence for the claimant satisfies every just demand, in answer to any *suspicions* that may have been insinuated in the proofs exhibited by the government.

I. Open, legitimate and complete commercial relations with lawful African trade, are exhibited in the proofs.

II. The single fact that the whole crew were *natives of the United States*, is, to those at all familiar with the course of the slave trade, almost a conclusive demonstration, that the project of this voyage did not include a traffic in slaves.

Case fol. 84.

1609

Fifth Point.—The utmost that can be claimed for the United States upon a sober estimate of the proofs, is,

I. That the character of the vessel, her size, build, and equipment do not absolutely exclude a conclusion that she was capable of service in the slave trade; and,

II. That her admitted destination for Cape Palmas carried her to a quarter of the globe, where the traffic in slaves is prosecuted.

These grounds will not support a condemnation. If they would, every vessel in the lawful African trade would be subject to forfeiture.

Sixth Point.—The decrees below should be reversed and the vessel and cargo released.

Wm. M. Evarts,
Of Counsel for Appellant.

In the Supreme Court of the United States.

DECEMBER TERM, 1864.

No. 116.

THE BARK SARAH, her tackle, apparel, and cargo, &c., Joshua Couillard, claimant, *vs.* THE UNITED STATES.	Appeal from the circuit court of the United States for the southern district of New York.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

TITIAN J. COFFEY,
Special Counsel for U. S.

IN THE SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1864.

No. 116.

IN PRIZE.

THE BARK SARAH, her tackle, apparel, and cargo, &c., Joshua Couillard, claimant, *vs.* THE UNITED STATES.	Appeal from the circuit court of the United States for the southern district of New York.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

On the 6th of April, 1861, the United States district attorney filed in the United States district court at New York a libel of information for the United States against the bark Sarah, her tackle, apparel, lading on board, &c., in a case of seizure and forfeiture, alleging—

First. The equipment, loading, and other preparation, and sailing of said vessel from the port of New York, for the purpose of carrying on a trade in slaves, within the terms and contrary to the provisions of the first section of the act of Congress of 22d March, 1794, &c.; and,

Second. The fitting, equipment, loading, and other preparation, and sailing of said vessel from the port of New York, for the like purpose, within the terms and contrary to the provisions of the second section of the act of 20th April, 1818, &c.

A monition having issued from the district court, the bark, her tackle, &c., and lading, were attached on the 15th of April, 1861.

On the 3d of May, 1861, Joshua Couillard, alleging himself to be owner of the bark, her tackle, &c., and bailee of the lading on board, intervened for the interest of himself as owner

and bailee, and made claim to the said bark and lading, averring that he was in possession of the bark and lading when they were attached, and that he was the true and *bona fide* owner of the bark and bailee of the lading, and that no other person was owner and bailee thereof; to which claim the district attorney excepted on the 11th of May, 1861.

On the 9th of September, 1861, the district court, having heard the evidence and arguments, decreed condemnation of the vessel, her tackle, &c., and cargo; from which decree the claimant appealed to the United States circuit court, and that court, on the 6th of November, 1862, affirmed the action of the district court; whereupon the claimant appealed to this court.

ACTS OF CONGRESS.

The first section of the act of 22d March, 1794, (1 St. at L., 347,) the violation of which the libel in this case alleges, declares that "No citizen or citizens of the United States, or foreigner, or any other person coming into or residing within the same, shall, for himself or any other person whatsoever, either as master, factor, or owner, build, fit, equip, load, or otherwise prepare any ship or vessel, within any port or place of the United States, nor shall cause any ship or vessel to sail from any port or place within the same, for the purpose of carrying on any trade or traffic in slaves, to any foreign country; or for the purpose of procuring from any foreign kingdom, place, or country, the inhabitants of such kingdom, place, or country, to be transported to any foreign country port, or place whatever, to be sold or disposed of as slaves;" any ship or vessel so fitted out, &c., to be forfeited to the United States, &c.

The second section of the act of 20th April, 1818, (3 St. at L., 450,) the violation of which this libel also alleges, declares that "No citizen or citizens of the United States, or any other person or persons, shall, after the passing of this act, as aforesaid, for himself, themselves, or any other person or persons whatsoever, either as master, factor, or owner, build, fit, equip, load, or otherwise prepare any ship or vessel in any port or place within the jurisdiction of the United

States, nor cause any such ship or vessel to sail from any port or place whatsoever, within the jurisdiction of the same, for the purpose of procuring any negro, mulatto, or person of color, from any foreign kingdom, place, or country, to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor;" and any ship or vessel so built, &c., shall be forfeited, &c.

Under either or both of these statutes the bark Sarah, her tackle, &c., and lading, are clearly liable to condemnation and forfeiture, provided it be established that she was fitted, equipped, loaded, or otherwise prepared for or caused to sail on the voyage on which she had started in April, 1861, *for the purpose* of carrying on a trade or traffic in slaves to any foreign country, or *for the purpose* of procuring from any foreign country, &c., the inhabitants of such country, to be transported to any foreign country, port, or place, to be sold or disposed of as slaves, or *for the purpose* of procuring any negro, mulatto, or person of color, from any foreign country, to be transported to any port or place whatsoever, to be held, sold, or otherwise disposed of as slaves, or to be held to service or labor.

She had completed her fitting, equipment, preparation and lading, and was avowedly proceeding on a voyage to the western coast of Africa, that coast from which the inhabitants of that country are notoriously obtained, to be transported and sold as slaves, and the question is thus reduced to an inquiry, whether she was fitted out to proceed or was proceeding to that coast *for the purpose* of carrying on a trade or traffic in slaves.

The *intent and purpose* of her enterprise thus constitute the whole question in the case.

The statutory offence which subjects the vessel and cargo to forfeiture is completed when the preparations for the voyage have reached a stage which satisfactorily shows the purpose of those preparations. In the case of the Emily and Caroline, (9 Wheat., 381,) this court has announced with fulness and precision the nature of this statutory offence, and what is necessary to its completion in these words:

"The object in view by the section of the law now under consideration was to prevent the preparation of vessels in our own ports which were intended for the slave trade. Hence is connected with this preparation, whether it consists in building, fitting, equipping or loading, *the purpose* for which the act is done. The law looks at *the intention*, and furnishes authority to take from the offender the means designed for the perpetration of the mischief. This is not punishing criminally the intention merely; it is the preparation of the vessel, and the purpose for which she is to be employed, that constitute the offence, and draw after it the penalty of forfeiture. As soon, therefore, as the preparations have progressed so far as clearly and satisfactorily to show the purpose for which they are made, the right of seizure attaches. * * * The intention or purpose for which the vessel is fitting must be made out, so as to leave no reasonable doubt as to the object. This is matter of proof, and, generally speaking, to be collected from the kind of preparation that has been made." Thompson J. See also the Plattsburgh, (10 Wheat., 133;) U. S. *vs.* Gooding, (12 Wheat., 460.)

We affirm, then, that the evidence clearly and satisfactorily establishes that the voyage for which the bark Sarah was fitted and prepared, and which she commenced from New York under a clearance for Cape Palmas, on the western coast of Africa, was undertaken for the purpose and with the intent of engaging in the slave traffic. And here it is to be observed that it makes no difference whether that intent and purpose was to take a slave cargo on board, or only to carry the outward cargo to supply the means of procuring it for another vessel—to be herself the principal trader, or only a tender or supply ship at any stage of the traffic. In either case, she was equally within the penalty of the law. For the law prohibits not merely the transportation of slaves, but the being employed in the business of the slave trade. The Alexander, (3 Mas., 175;) U. S. *vs.* The Catharine, (2 Paine, 721;) U. S. *vs.* Morris, (14 Pet., 464.)

In ascertaining from the character of the preparation the intent and purpose of this voyage, we are met by the obvious fact that its projectors had determined to evade the vigilance

of the government officers by giving to it the appearance of an honest and lawful enterprise. For it is matter of historical and judicial knowledge, that at and for years before the time of the seizure of this vessel New York had become a leading centre of preparation and outfit for the slave trade. For some time these preparations had been made in bold and almost flagrant defiance of the law, until the magnitude of the evil had aroused the prosecuting officers to extraordinary exertions for its suppression. The United States courts of that district were thus enabled to lay the strong hand of justice on these offenders, and under their vigorous administration of the law the slave traders were forced into caution and circumspection. They adopted all manner of devices to elude official vigilance and escape danger. One of the most obvious of these was to simulate a lawful and innocent trade to some port in the direction or on the route to the slave coast of Africa. In this case, the vessel was cleared directly for the western coast, but to a port beyond the slave region. As many of the indicia of a lawful trade as could be applied to this work of deception were invoked to screen this vessel from suspicion and seizure. But the very boldness with which she was equipped, laden and cleared for her voyage, throws into stronger and more significant contrast those features of the enterprise which compel conviction that its purpose was, in fact, that which is alleged in the libel.

A review of the prominent facts in the history of this vessel and her preparation for the projected voyage, and of the character and conduct of the persons who controlled her, as disclosed in the testimony, will demonstrate the correctness of the decree of forfeiture.

DOCUMENTARY HISTORY OF THE VESSEL AND PREPARATION FOR THE VOYAGE.

On the 23d of January, 1860, "Edward Livingston, of the city, county and State of New York," allegirg himself to be "only owner of the bark Sarah," by bill of sale of that date, purported to sell the said vessel to "William Hood, of the city, county, and State of New York," for "the sum of one dollar," (Record, pp. 58, 59.)

On the 14th March, 1860, "William Hood, of the city and State of New York," by bill of sale, purported to sell the bark Sarah to "Augustus Head, jr., merchant of Boston, State of Massachusetts," for "the sum of nine thousand dollars," (Record, pp 59, 60.)

On the 7th of March, 1861, Augustus Head, jr., of Boston by bill of sale, purported to sell the bark Sarah to "C. P. Smith, of the city, county and State of New York," for "the sum of nine thousand two hundred and fifty dollars," (Record, pp. 56, 57.)

On the 11th March, 1861, four days thereafter, "Charles P. Smith, of the city, county and State of New York," by bill of sale, purports to sell the Sarah to "Joshua Couillard, of the city of Brooklyn, county of Kings and State of New York," for "the sum of ten thousand dollars," (Record, pp. 27, 28,) which bill of sale was acknowledged 8th April, 1861.

The vessel was registered anew on the 11th of April, 1861, and a new certificate of registry issued at that date, (Record, pp. 28, 29.)

The shipping articles, signed by Couillard as captain, David Reed as mate, and ten other persons as mate, steward and cook and seamen, describe the bark Sarah "as now bound from the port of New York to Cape Palmas and a market," and bind the parties to "render themselves on board the vessel on or before Saturday, the 13th day of April, 1861."

The bill of lading, signed by Captain Couillard, recites that the goods, &c., shipped by R. J. Arguelles, on board the bark Sarah, &c., are to be delivered in good order and condition at the port of Cape Palmas and a market, &c., unto Messrs. Franc José de Hiderras, of Ahghewy, or to his assigns, he or they paying freight for the said merchandise, *as per charter-party*, with primage and average accustomed.

The outward manifest of the cargo, dated 13th April, and certified 15th April, 1861, describes it as "laden at the port of New York, on board the bark Sarah, whereof Couillard is master, bound for Cape Palmas, (Record, 47, 48.)

The shipper's manifest, purporting to be sworn to by R. J. Arguelles, 13th April, 1861, is headed "Manifest *of part* of cargo shipped by R. J. Arguelles on board the bark Sarah,

whereof ——— is master, for Cape Palmas," (Rec., 49, 50.)

These manifests, the first sworn to by the master, and the second by the shipper, contain precisely the same account, and list of goods, &c., shipped, (with no other variations than such as result from a few obvious misprints,) showing that the articles purporting to have been shipped by Arguelles constituted the whole cargo of the vessel as cleared.

On the 15th April, 1861, Couillard, as master, entered and cleared the bark Sarah, "bound for Cape Palmas, on board merchandise and stores," (Rec., 50.) On that day she was seized, as before stated.

PAROL TESTIMONY.

The parol testimony which establishes the guilty purpose with which this vessel started on her voyage, and sustains the decree of the district court, is both circumstantial and direct.

I.

The circumstantial testimony may be conveniently classified to show—

1st. *That the vessel, her equipment and cargo, were peculiarly fitted for the slave trade.*

She was a vessel of about 260 tons, 103 feet long, 25 feet broad, 11 feet 3 inches deep, with three masts, was similar to other vessels charged with and seized and condemned for being engaged in the slave trade, as the Kate, Josephine, Charlotte E. Day, &c., some being schooners, some barks, and some brigs; tonnage averaging from 200 to a little less than 400 tons. These vessels are usually clipper-built, adapted to fast sailing, with lofty spars for a large amount of canvas. The Sarah is clipper-built, intended for fast sailing, with high and light spars, calculated to carry a press of canvas, and sharp. Her cooking galley is 19 to 20 feet long, and wide in proportion, about the size of that on the condemned slaver Kate. She had on deck a number of extra spars, similar to other vessels condemned as slavers, as the Kate and the Weathergage, and besides her ordinary boats, two large surf-boats, never needed for a vessel trading to a regular commer-

cial port. See testimony of Thompson, Horton and De Graw, (Rec., pp. 11, 12, 16, 17, 18.)

Her cargo was equally significant. The manifest shows a large quantity (19,448 gallons) of oil cask shucks, with a proportionate quantity of iron hoops and rivets. Horton, (Rec., p. 12,) says the manifest is wrong in calling them oil casks—they would hold water as well as oil. One of the invariable and distinguishing parts of the outfit of a slaver is a large supply either of casks or of shucks, with iron hoops, &c., to be converted into casks for holding a large supply of water. Although it is convenient to call these casks "oil casks," it is remarkable that they are found in large quantities on every vessel seized or condemned as slavers. Their fitness, or rather necessity for the slave trade is too obvious for remark.

De Graw found, on examining cargo, 15 or 16 barrels of beef or pork not on the manifest, also 16 barrels of bread and 6 barrels of flour, and one tierce of rice, marked for the homeward passage in plain letters. There were half a dozen water casks on deck, besides the casks in shucks on manifest, which last, De Graw says, were the same style as those on board other vessels, as the Kate.

Rum, of which the manifest shows 150 hogshead on board, is a familiar article of trade for negroes, as are muskets and other articles on the manifest.

2d. *Circumstantial evidence of guilty purpose arising out of the character and conduct of the persons connected with the vessel.*

C. P. SMITH.

On the 7th of March, 1861, Augustus Head, jr., of Boston, purported to sell the bark Sarah to one "C. P. Smith, of the city of New York," for $9,250, who, on the 11th of March, purported to sell her to Couillard for $10,000. De Graw, who was entrance and clearance clerk in the custom-house for seven years, says, (page 17,) "In the sale or transfer of such vessels [slavers] I notice that there are usually two or three transfers made previous to the sailing of the

vessel." He also says: "Don't know of any C. P. Smith engaged in the trade," (page 18.) R. J. Macomber says: "Has looked in New York city directories carefully for Charles P. Smith for five years—name not there; looked in one Brooklyn directory," (Rec., p. 17.) The claimant has not attempted to prove the existence of such a person.

CAPTAIN COUILLARD.

DeGraw states, (Rec., pp. 17, 18,) that he knows the principal houses in New York who are engaged in the legal trade to the African coast, but does not know Couillard or Arguelles. Vessels engaged in the legal trade are cleared in the name of one of these firms, but those not engaged in the legal trade are cleared in some bogus name, that of the captain, or some one else. When application was made to DeGraw, as clearance clerk, he always asked "Who clears the vessel?" In this case the answer being that the master cleared the vessel, and seeing that she was not cleared by a regular house, in the regular trade, his suspicions were aroused, (p. 18.)

Couillard's conduct throughout, both as owner and captain, is inconsistent with an innocent and lawful purpose in the voyage. If he was the actual owner, he has not attempted to furnish the proof of it, which would repel suspicion. He has produced a bill of sale from Smith, which might have been easily fabricated, but has not produced Smith himself or either of the witnesses to the bill of sale. He has failed to show, either by the production of the check or any other evidence so easily within reach in an honest transaction, that he actually paid $10,000 or any other sum for the vessel, which, when appraised, 21st April, 1861, was valued at $4,000, (Rec., p. 6.) He has also suppressed evidence which would have explained the true character of the voyage. The bill of lading produced by him discloses the fact that the vessel was under a charter-party, (Rec., p. 26,) which is neither produced nor accounted for.

Thompson (the deputy marshal who seized the bark Sarah) states that he seized her 15 miles down the bay; when approaching, and within half a mile of her, he saw through a

spy-glass that several persons on board were examining the vessel he was on, and immediately after somebody threw a box overboard, which sank; it was about 2 by 3 feet in size. Thompson went on board, and Captain Couillard came forward and said he was captain and owner of the vessel. Thompson demanded the ship's papers, and Couillard handed them to him, (Rec., 11.) Martin McDonald, who was on the vessel with Thompson, fully corroborates the statement that this box was thrown overboard, (Rec., 15, 16.)

Couillard was on board, in command, when this occurred; he is the claimant in this case, and has attempted no explanation of the damaging fact; but, on the contrary, has made the vain attempt to disprove it by Stanhope's negative testimony These facts together directly fasten on him the guilt and responsibility of having destroyed evidence showing the true character of the voyage.

Although he claims as bailee of the cargo, he has not attempted to show where or by whom it was purchased or paid for, or to supply it with any of the easily found marks of an honest commercial venture. He has shown no connexion with any commercial house in New York engaged in honest trade to Africa or anywhere else; no arrangements or scheme for a return cargo; no connexion with any commercial house or agent on the coast of Africa, except so far as the reference on the bill of lading shows that Arguelles consigned his goods to a certain Mideros or "Hiderras, of Aghewy, or his assigns," who seems to have been the agent on the coast of a man named Machado, whose real character sufficiently appears throughout his testimony in the several slave cases now pending in this court.

Although he made the usual oath that the manifest delivered by him to the collector contained a full, just, and true account of all the goods, &c., on the vessel, and to report any other goods, &c., that should be put on board, we have seen that large quantities of beef, pork, and bread (usual supplies of slavers) were found on board that were not manifested or reported.

He has failed to produce Arguelles, the pretended shipper; Miller, the mate, who acted as responsible agent in his absence,

or any other person who could have explained the real purpose of the voyage and removed the presumptions of guilt which their conduct before the seizure, and their absence afterwards, have created.

Finally, the witnesses produced and examined by Couillard, although carefully selected to exclude all who would testify to any essential facts explanatory of the preparations for and purposes of the voyage, are generally either Spaniards, Portuguese, or other persons having suspicious connexion with trade on the south and west coast of Africa. The testimony of some of these witnesses leaves on the mind a strong suspicion that they were neither ignorant nor innocent of the secret machinery which a few years ago was so effectively used in New York to prosecute the slave trade, in evasion and violation of the law.

R. J. ARGUELLES.

One of the most significant parts of the case is the relation which the mysterious Arguelles bears to it. He was not a resident of New York or Brooklyn, or engaged in business there, and could not be found by the officers of the government when searched for. See testimony of Andrews, (Rec., p. 11.) And yet he, or some person assuming that name, was certainly in New York in the spring of 1861. The claimant's witness, Galers, states, (Rec., p. 25,) that he saw Arguelles in New York between March and April, (he was represented to be the clerk of Medieras,) and, on the 13th of April, two days before the seizure of the vessel, he swore to the manifest of cargo at the custom-house, (Rec., pp. 49, 50.) The value of the cargo, as sworn to by him, was nearly $22,000; the value of the vessel, even at the price fixed in the bill of sale, was only $10,000, and, in fact, was but $4,000; and yet, through the whole proceeding, he neither appears as claimant nor as witness, nor have we any account whatever of his whereabouts. Couillard, who claims the cargo as "bailee," nowhere states or proves for whom he is bailee, and nothing in the case discloses who is the real owner of the goods. One of two conclusions must be accepted, either that Arguelles was a name falsely assumed by some person who is afraid to

assert his claim, or that Arguelles, if there be such a person, is himself afraid to appear. A good reason for this prudence, whether the person be named Arguelles or not, may be found in the fact that the law attaches penalties to the prosecution of the slave trade, even more to be feared than the loss of a vessel or cargo. Whether this be the true reason or not, the fact that a man, proved to have been in New York within two days of the seizure of a cargo so valuable as this, shipped in his name to a house with which he is asserted to have been connected, is ashamed or afraid to appear in its defence, certainly raises a very strong presumption that it was shipped for the purpose alleged in the libel. And that presumption operates with increased strength against the actual claimant who, having knowledge of this person, neither discloses his real character and relation to the cargo nor accounts for his silence and absence.

DIRECT TESTIMONY.

In addition to the circumstantial evidence referred to, clearly indicating the real purpose of this voyage, the direct evidence of the declarations of the mate, Miller, is conclusive.

This man, who had shipped under the false name of David Reed, is shown by the whole testimony to have had authority to ship men for the voyage, and to exercise control in the absence of Captain Couillard. It is, indeed, probable that he was to have been the actual master of the vessel. He so stated to Delano, (Rec., 13.) Whether this was true or not, his authority to ship men as part of the crew clearly appears, and was recognized in the case of Delano. That he shipped Delano under the false name of Comstock, and paid his advance money, which money, he (Miller) received for that purpose from Stanhope; that Delano was placed on the crew list by that false name, and recognized as one of the crew, is proved, not only by his own testimony, (Rec., pp. 13, 14,) and by the shipping articles, (Rec., p. 32,) and crew list, (Rec., p. 45,) but by the testimony of Stanhope, clerk of the shipping notaries, (Rec., pp. 23, 24,) who shipped all the men but Delano, and who knew that Delano was shipped

under a false name. Delano also swears (Rec., p. 13) that Miller "on board acted as captain, mate and all hands," and signed receipts for cargo, (Stanhope, Rec., p. 24.)

This man, then, whose employment of a sailor as one of the crew was thus authorized and approved, in the act of employing him represented himself as master of the vessel; said "he was going to the coast of Africa," "said he was going blackbirding," and sometimes used the word "ebony," (the meaning of which cant phrases is explained by DeGraw,) and tried to induce the witness to go along by plying him with liquor, and by promises of large profits, (Rec., p. 13, 14, 15.)

The estimate placed on the importance of this testimony by the parties concerned in this venture is shown by the efforts that were made to get the witness, Delano, out of the law's reach. After Miller's arrest, a man named Baulch came to Delano, to persuade him to go out of the country and not appear against Miller. Baulch showed him a check for $25, and wanted the witness to go with him, and the check was to pay expenses to the country. They went to Jersey City, took tickets for Trenton, when witness was arrested; Baulch said Miller would give any amount of money to get witness out of the way, and Miller was to pay him (Baulch) for getting witness out of the way, (Rec., p. 15.) The check which Baulch had to pay the expenses of removing Delano was given by Mr. Beebe, counsel for Miller, at the request of Miller, *because Captain Couillard authorized him to give it*, although the captain said there was nothing due Miller (Rec., p. 25.) When Couillard thus advanced money to get the witness away, he knew that Miller, his mate, had shipped under a false name, and had also shipped the witness under a false name. This directly connects Couillard with the original declarations of Miller to Delano.

But if there was any explanation of these facts, bearing so strongly against both Miller and Couillard, the latter might easily have furnished it by producing Miller as a witness in this case. But he is careful not to do so; and when the government, to supply him with the means of making that explanation, sought Miller as a witness, he had disappeared, and could nowhere be found, (Rec., p. 21.)

Not only do the declarations of Miller operate as direct evidence against Couillard, but the absence of Miller, with the evident complicity of Couillard, when sought as a witness by the United States, forces irresistibly the conviction that those declarations disclosed the true purpose of the voyage.

The relation thus established to Couillard and the proposed voyage also makes the declaration of Miller to Dodger evidence against Couillard of the purpose of the voyage. That witness states, that, on board the Sarah, within a few days of the time she sailed, Miller, then exercising authority on the vessel, told him she was going on a trading voyage to the African coast, and would probably bring back some negroes, (Rec., 19, 20.)

The following propositions are submitted:

I.

The evidence fully and satisfactorily proves that the Sarah, at the time of her seizure, was actually fitted out and laden in exact accordance with the requirements of the slave trade, and that she had sailed for the western coast of Africa, where that trade is prosecuted. These facts suggest and sustain the reasonable suspicion that her destination and purpose were to engage in that trade. They therefore establish probable cause for her seizure.

II.

This reasonable suspicion is not repelled by the fact that the vessel was openly fitted out and cleared for a port of the African coast where the slave trade is not prosecuted, with portions of her cargo equally fitted for the lawful or the slave trade, because, as already stated, that is one of the devices by which the slave traders are well known to attempt escape from the vigilance of the law. Judge Betts has judicially decided, in the case of the "bark Kate," "that slaving vessels are now employed in the trade, fitted out and cleared at ports abroad, and in this country openly, carrying substantially like cargoes and equipments as those which pursue a lawful trade upon the coast of Africa."

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III.

But the testimony abounds with facts which strengthen the reasonable suspicion of the guilty purpose with which this vessel started, into a clear and satisfactory conviction of that guilty purpose; being facts more or less inconsistent with an honest or lawful voyage. The most prominent of these may be thus recapitulated:

A.

The purchase from Head and transfer to Couillard, within four days, of a vessel so peculiarly fitted for this trade by Smith, who, though represented to be of New York, and having there acknowledged the bill of sale on the 8th April, 1861, could not be found in May or June, 1861, and had evidently never lived in that city by that name; nor was he produced by the claimant.

B.

That Couillard, having only acquired the title to the vessel on the 8th of April, 1861, had his shipping articles signed, his crew shipped, and his cargo actually laden and manifested on the 13th of April, 1861, only five days thereafter, and his vessel cleared and fifteen miles on her voyage on the 15th of April, 1861, only seven days thereafter. And this his *first* voyage, in his newly purchased vessel, to the distant coast of Africa! In this connexion it may be also noticed that Stanhope, who shipped the crew, swears (Rec., p. 24) that Miller, the mate, was on board the vessel *two weeks before she sailed.* As she sailed on the 15th of April, Miller must have been shipped about the 1st of April, *one week* before Couillard purchased the vessel according to his bill of sale from Smith.

C.

That he omitted to report and manifest portions of his cargo, specially fitted for the slave trade.

D.

That on the approach of the officers to seize the vessel, he threw, or caused to be thrown overboard, a box which the law

will presume to have contained inculpatory evidence. (See authorities hereafter.)

E.

That, according to his bill of lading, a charter-party existed which he has not produced, accounted for, or proved contents of; nor has he produced any letter of instructions from the charter or other ship's papers to explain the real object of the voyage.

F.

That, disclaiming any other interest in the cargo than that of "bailee of the lading," he has neither disclosed the name of the owner nor in any way furnished information as to where, from whom, or by whom it was purchased, for what kind of trade it was shipped, or when, where, on what terms, or by whom he was to be paid for carrying it. It is most impressive that, although the claimant, who of all men knew most of the cargo, gave evidence in his defence, he did not add a single fact to the limited and inadeqate information of the origin, ownership, or destination of the cargo furnished by the few ship's papers that were obtained.

G.

That the alleged shipper of the cargo, Arguelles, having no known connexion with any commercial house in New York, or even known residence in New York, and having been in that city on the 13th of April, could not be found after the seizure of his cargo, worth $22,000, on the 15th of April, and has failed ever since either to appear or to claim the cargo—Couillard having failed to explain his disappearance, it can only be accounted for by the fear of personal punishment for conscious guilt.

H.

That Miller, a man of authority on the vessel, who was shipped under a false name, also shipped another man by a false name, and in the authorized act of employing that man disclosed to him that the real purpose of the voyage was slave trading, and promised him a portion of the profits.

When arrested on the charge of serving on board a slave vessel, the Sarah, (Rec., p. 55,) Couillard, although he owed Miller nothing, furnished him with money to remove from New York the witness, who, proving his guilt, established also the guilt of the Sarah—nor has he since produced Miller. Miller's authority to employ the sailor being established, his declarations whilst so doing concerning the voyage are evidence against his own employer, (U. S. *vs.* Gooding, 12 Wheat., 460;) of this conclusive character are also the declarations of Miller to Dodger.

I.

Around these leading facts gather a variety of circumstances which need not be repeated, some in themselves strongly suspicious, and all furnishing evidence of guilt in the absence of the explanation which the claimant easily could and ought to have given, if the voyage were innocent.

IV.

The accumulated proofs of a guilty purpose in the arrested voyage completely overbear any presumption of innocence which might be claimed from the asserted lawful character of the voyage, and of themselves subject the vessel, &c., and cargo to forfeiture, unless the claimant can restore such presumption of innocence by explanatory evidence which will destroy the force of these proofs.

V.

But the utter failure of the claimant to furnish such explanatory evidence, that evidence being peculiarly within his possession, greatly strengthens the force of the inculpatory evidence, and raises it to the character of clear and satisfactory proof.

In the Emily and Caroline (9 Wheat., 381) this court said, "There was no attempt whatever by the claimant to explain the object of these peculiar fitments, or to show that the destination of the vessels was other than that of the slave trade. We may *therefore* safely conclude that the purpose for which these vessels were fitting was the slave trade, &c."

"A party, in omitting to produce that evidence in elucidation of the subject-matter in dispute, which is within his power, and which rests peculiarly within his own knowledge, frequently affords occasions for strong presumptions against him; since it raises a strong suspicion that such evidence, if adduced, would operate to his prejudice;" (1 Starkie Ev., 34, 35; Taylor *vs.* Riggs, 1 Pet., 596.) "The force of suspicious circumstances is augmented whenever the party attempts no explanation of facts which he may be reasonably presumed to be able to explain;" (Wills on Circumstantial Ev., 86, 41 Law Lib., 40.)

"No person," said Mr. Justice Abbott, in Rex *vs.* Burdett, (4 B. and A., 140,) "is to be required to explain or contradict until enough has been proved to warrant a reasonable and just conclusion against him, in the absence of explanation or contradiction; but when such proof has been given, and the nature of the case is such as to admit of explanation or contradiction, if the conclusion to which the proof leads be untrue, and the accused offer no explanation or contradiction, can human reason do otherwise than adopt the conclusion to which the proof tends?"

See also the opinion of this court in the Josefa Segunda, (5 Wheat., 338,) where the necessity of explaining suspicious cirstances in a case of this kind, to rebut the presumption of guilt, was again declared; and opinion of the New York circuit court in U. S. *vs.* The Catharine, 2 Paine, 747.

The strong presumption of guilt made *in odium spoliatoris*, where a party destroys or suppresses evidence, is directly applicable to Couillard for his misconduct in throwing overboard the box when the vessel was seized, and for his failure to produce the charter-party, and other evidence known or presumed to be in his possession. Such conduct always overthrows the presumption of innocence, and establishes that of guilt. Thus the spoliation of papers material to show the neutral character of a vessel furnishes a strong presumption against the ship's neutrality, (1 Greenl. Ev., see 37, and cases cited.)

These principles apply with peculiar force in cases in which the question is one of *intention*, to be ascertained from acts and preparations, all of which were carefully moulded and directed so as to conceal that intention and give the transaction the semblance of a different one. The party alleging a guilty intention is necessarily compelled to extract the evidence of it from acts and preparations expressly designed to conceal it, and to rely on such facts of suspicious aspect as accident, carelessness, or the natural incongruity between truth and falsehood may develop. Where the guilty purpose is hidden under the guise of a lawful enterprise with such skill and adroitness as the slave traders are well known to have exhibited, those suspicious facts are apt to be few and insignificant. When they *are* discovered and proved, their ordinary force ought to be greatly strengthened by the failure of the party on whom they are fastened to make full and frank explanation of them. And the force of such suspicions will increase in proportion as their explanation is easy to the party. In this case many prominent facts quite inconsistent with an innocent purpose mark every stage of the venture. The government cannot explain them away, because the evidence of their real character is not within its reach, that evidence having been, in many instances, suppressed, destroyed, or removed by the claimant, and the whole transaction having been so much out of the usual channels of commercial operations as to elude fair inquiry. The claimant, although he, and he only, holds the clues to these mysteries, will not disclose them, but choses rather to rest under the shadow of the suspicions and presumptions they arouse than to subject them to the light of full and free investigation. We therefore insist that, even if these facts, inconsistent with an innocent purpose, were, in this case, far less numerous or impressive than they are, this misconduct of the claimant would entitle them to the weight of satisfactory proof.

VI.

The circumstantial and direct evidence in this case being of themselves, on the principles already stated, conclusive of the question of guilty purpose in the projected enterprise, so

that forfeiture must ensue, it is not necessary to rest the case on the rule that a presumption of guilt will be established by the existence of merely suspicious circumstances, which the claimant may, but will not explain. In his opinion, in the case of the "Bark Kate," the learned judge of the district court for the southern district of New York thus states the rule: "In actions of this class, (for penalties or forfeitures for infractions of penal laws,) the government is not restricted to proof of positive facts in laying a foundation for a presumption or inference that acts have been done in violation of law, but they may invoke circumstances calculated to raise suspicions that the purpose inducing the acts performed was illicit, which suspicions must avail as convicting evidence, unless countervailed or explained by proofs in the power of the claimant to furnish." The opinion from which this rule is extracted is an able and elaborate vindication of the propriety of its application to slave cases, where the guilty parties had learned to conceal their traffic under the garb of innocent trade, and, by submerging all positive proof of their real purpose, had almost defeated the operation of the preventive acts of 1794 and 1818. The large experience of Judge Betts in this class of cases gives to his opinion, on the question of the rule of proof, quite as much weight of authority as can be claimed for that of any other court, and it is believed that this court, on review of the slave cases at this term, will give to it their approval, if, in any of them, they should think its application necessary.

In conclusion, it is submitted, that, on the whole case, the decree of the district court, affirmed by the circuit court, should be also affirmed by this court.

TITIAN J. COFFEY,
Special Counsel for U. S.

1635.

DECISION IN THE CASE OF THE BARK SARAH.—IN THE UNITED STATES DISTRICT COURT, BETTS, J.—THE UNITED STATES *VS.* THE BARK SARAH AND CARGO.

The provisions of the two statutes upon which the libel is founded are in themselves exceedingly rigorous, and rest upon principles of high morality and national policy rather than aiming to mete out punishment against offences actually committed to the detriment and insecurity of society. The laws put in prohibition a *purpose* or *intention* to prosecute a trade in slaves. The outward act is not the *gravamen* of the offence, as ships may be built, manned, and laden with every possible adaptation to the slave trade, and the act be harmless under the laws, unless it be entered upon with design and meaning to make preparation a means of carrying on the prohibited trade. Under the existing state of public sentiment in the Christian world, and in face of the hazard of laws of great severity, it is not to be supposed that the slave trade will be undertaken openly or ventured upon at all without the exercise of the most studied precautions; and yet it is flagrant to the notice of legislators and judges, to the Christian and moralist, that a most daring and successful traffic is constantly prosecuted in defiance of our laws, and the most vigorous exertions by the national forces, in concurrence with other powers, for its prevention.

Courts of justice can no longer extend over these atrocious offences the mantle of that *presumption* which screens persons accused of high criminal turpitude, treason, murder, fratricide, piracy, robbery, forgery, perjury, theft, &c., and looks upon and treats those charged with this *particular crime* also to be innocent until strong proof fixes guilt upon them; but they are compelled to require those charged with these offences to clear away suspicion fastened upon them by evidence direct or circumstantial, conducing to show they were willingly concerned in violating these laws, by producing proofs presumed to be in his control, or be convicted for failing to vindicate his integrity and innocency. At least that principle is acknowleged as the rule of decision in this court, and will continue such

until the courts of appeal, to whose revision the doctrine is under submission, shall have decided to the contrary.

In this case three inquiries present themselves:

I.

Was this vessel prepared in New York and caused to sail therefrom by persons, as charged in the information, for the *purpose* of carrying on a trade in slaves, in violation of the act of Congress of March 22, 1794?

II.

Was the vessel prepared and sailed by or for any person in this port for the *purpose* of violating the act of Congress of April 20, 1818, in relation to the slave trade, as charged in the libel of information?

III.

If the evidence produced on the trial amounts to reasonable or probable cause for believing the charges in the libel well founded, has the claimant brought forward evidence, proved, or reasonably to be intended to be at his command, in relieving his motives and purposes from such imputations?

The court, after remarking on the acquirement by the claimant of the vessel by bill of sale, says:

It appears upon the testimony that this vessel's size, structure, and capacity correspond essentially with that class frequently found employed in the slave trade, and also well adapted to convey cargo to and from the coast; and it does not seem to me any facts are obtained as to her outward fitment or preparation which go to show her more probably intended for an illicit than lawful service. On the outward show of facts, the case, in my view, falls within the principle declared in the bark "Pauchita," and other causes preceding that, (23 vol. MSS. Decisions, 102,) that a condemnation of a vessel cannot properly be pronounced upon intrinsic evidence of a guilty purpose in her outfit, when the build, cargo, and preparations upon her are no more adapted and fitted to an illegal than legal trade.

The main particulars which, to my mind, impart doubts as to the integrity of this voyage, consist in circumstances connected with the shipment of the cargo and the conduct of the master of the vessel and the shipper in relation to that transaction, the master himself being the alleged owner of her.

R. J. Arguilles shipped the cargo, (the bill of lading therefor corresponding with the manifest sworn to by the shipper,) and the bill of lading was receipted by the claimant, with an obligation to deliver the cargo to the assignee, Mr. F. J. Mideiros, "or his assigns, he or they paying freight for the merchandise as per charter-party." This amounts to a distinct acknowledgment by the master and shipper that a charter-party exists in the case, but which has not been produced or given in evidence. No party appears to the warrant of arrest, or puts in a claim to the cargo seized. The master intervenes for his interest in the bark and cargo, and claims to be sole owner of the vessel, and, "as such master and owner, he was and is the lawful bailee of the cargo laden on board." Of course a carrier under a bill of lading acquires no title to the property transported by his ship, further than a rightful possession against wrong-doers, and for security of freight, and thereby may have a privilege in an admiralty court to resist a change of that possession to the detriment of his particular agency. The habit, which has appeared comparatively recent, for bailees on hire to intervene in actions with a claim of ownership to the property arrested, is believed to have no foundation in law or practice further than for the protection of such qualified possessory right, nor when the prosecution seeks the condemnation of the thing seized, as on a voyage fraudulent by all parties concerned in it. In this case, however, the acts of the claimant as master, owner, and charterer of the vessel, and the participation of the lader of the cargo in those acts, under such charter-party, all become items of evidence, having a legal pertinency to the inquiry and issue in this suit, whether the voyage in question was set on foot by the parties before the court honestly or with the intent and purpose of carrying on the slave trade.

I.

It is a particular of a clearly suspicious aspect, that the consignor of this shipment, Mr. Arguilles, who swore to his manifest on the 13th of April, and took his bill of lading for the cargo, (a blank date,) but to be presumed not previous to the loading of it on the vessel, and that she was arrested on attempting to leave this port on the 15th, does not appear to defend the property from arrest or give any explanation respecting it.

II.

It was proved on the hearing that Mr. Arguilles was introduced in this city, about the time this cargo shipped, by the consignee (Midieros) as his clerk—Mr. Midieros being shown to be a resident on the coast of Africa.

III.

The claimant, from taking upon himself the defence of this suit, must be presumed to act as agent of those parties, to be cognizant of their presence here, and to know all the facts concerning the preparation of the voyage and the objects the parties had in view in chartering his vessel and obtaining his interposition and care in protecting their interests as consignor and consignee.

IV.

I think a transaction so ambiguous and covert as this appears to have been, calls for an open disclosure of the facts which those parties might furnish in proof, before the court can be called upon to say there is no probable cause shown for the seizure of vessel and cargo.

V.

A further shade of suspicion attaches to the transaction from the fact, notorious to our courts and legislative and executive authorities, that a criminal traffic in slaves has been vigorously carried on in American vessels from American ports for a succession of years, by vessels and cargoes very similar to this adventure, and that it is now the governing

rule of this court to demand from persons undertaking trading voyages to the coast of Africa, under exterior or intrinsic circumstances of a suspicious character, to hold them bound to vindicate the integrity of the enterprises by such evidence as manifestly is within their ability to produce, satisfying the court that the policy of the government and the requirements of its laws were to be faithfully and honestly observed.

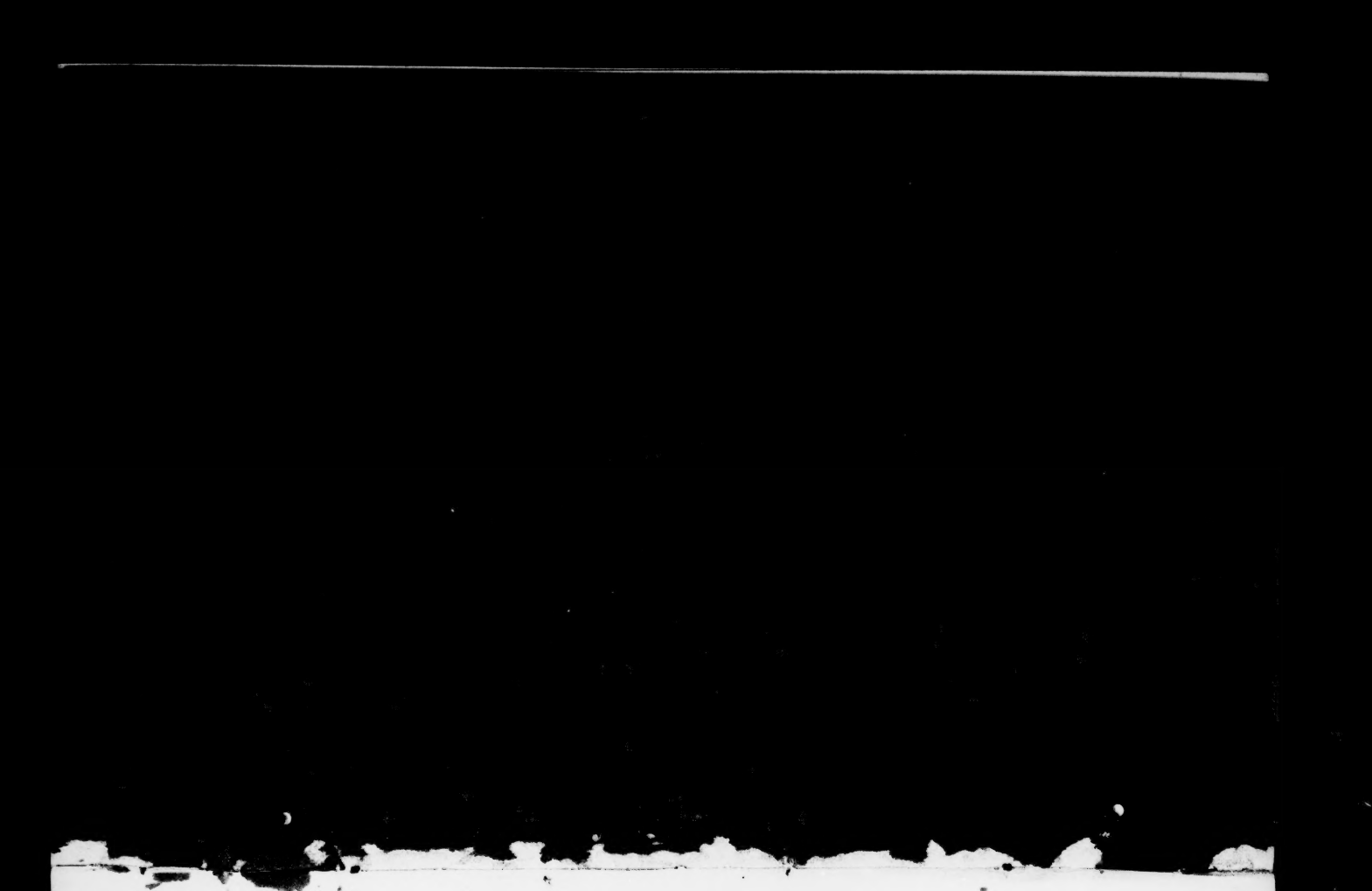
In my judgment, the case, under all its connexions and aspects, required the claimant (the evidence proving him connected with the transaction) to prove that the vessel was truly purchased and paid for by him as his own property, to be used in a lawful employment, and not under any secret trust or understanding that she should be devoted to a slave voyage at the risk of other persons; that he does not intervene for the cargo with knowledge or notice that it was to be used directly or indirectly in procuring slaves, or with intent to screen it from just condemnation of law; that there was no secret charter giving a purpose and direction to the voyage, different from that apparent on the bill of lading, and that the consignor and consignee honestly, so far as he had notice, procured and intended to apply the cargo to the ends of legitimate commerce, and did not procure and despatch it with the intention and expectation it should be used by them, or under their agency, in violation of the acts of Congress referred to. There was abundant opportunity to furnish proofs that such suspicions were without reasonable cause; and I must hold, in consonance with the principles decided by this court in the cases of the "Kate," the "Weather Gauge," &c., (now under consideration in the appellate court,) that the claimant, omitting to give evidence to those matters, the libellants are entitled to a decree of condemnation against the vessel and cargo, because of his probable complicity with a voyage known to him to be in violation of those acts of Congress. Decree accordingly.

UNITED STATES CIRCUIT COURT, NOVEMBER 8.—OPINION OF JUDGE NELSON, ON APPEAL.—THE UNITED STATES *VS.* THE BARK SARAH.

NELSON, J.—The libel in this case was filed by the government against the ship and cargo, as being engaged by her owners and master in the slave trade, in violation of the acts of Congress. The court below, after hearing, condemned vessel and cargo. The case is before us on appeal. After a very full examination of it, and of the brief remarks of the respective counsel, we are satisfied with that conclusion. We cannot say that there is any positive or express evidence that the vessel was fitted out to be engaged in this trade, but the circumstantial proofs leave no reasonable doubt in our mind of the fact; and we have had experience enough in cases of this character to know that express evidence or positive proof need not be expected, nor indeed should be required. Our experience also satisfies us that any vessel engaged in an honest trade on the coast of Africa can find no serious difficulty in maintaining its legitimacy when charged to the contrary, and a *prima facie* case presented by the government.

In such cases, persons engaged in the fitting out and navigation of the vessel will be called as witnesses—persons who necessarily know the nature and character of her employment, and whether legitimate or not. Such witnesses, when produced, afford satisfactory evidence to the court of the truth of the case, and these are witnesses who are within the knowledge and control of the parties interested in maintaining the defence. Their absence, unless satisfactorily accounted for, bears heavily against it. We are free to say that it does in this case.

Decree below affirmed.



IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

OPINION

OF

JUDGE BETTS

IN THE CASE OF

THE BARK KATE.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

OPINION OF JUDGE BETTS

IN THE CASE OF

THE BARK KATE.

BETTS, J.—A longer time has been occupied on the final hearing of this case than its intrinsic difficulties or importance would justly demand. But it is treated by the government as a representative case, the vessel being supposed to be prepared to simulate a lawful trader in pursuit of an honest voyage, whilst being in reality fitted and intended to be employed in the slave trade, and be associated with that large fleet of marauders who have for years prosecuted the nefarious business in defiance of law and to the discredit of the nation. The claimant, on his side, regards the proceedings of the government in the arrest of the vessel and the institution of this action a highhanded attempt to destroy a legitimate business, and subject him to serious pecuniary losses. The vessel was found in this port ready to take a clearance and proceed to sea, when she was seized by the collector on the 1st of October last, and was the same day libelled under the acts of Congress of March 22, 1794, and April 20, 1818, as having been fitted and prepared for the purpose of carrying on the slave trade in violation of the provisions of those statutes.

Charles P. Lake appeared in court on the 17th of October to the process of attachment issued under the libel, and claimed to be owner of the vessel and carrier of the cargo; and having obtained from the court further time to answer the libel, filed his answer on the 8th of November thereafter, taking a general issue to all its allegations. These are all the pleadings on his part. No owner of the cargo appears as such to claim or defend it in the action. On the trial of the cause the plaintiff

offered testimony in support of the libel of acts of the owner and the vessel prior to the 6th of July, 1860, at which time she had been seized and libelled in behalf of the United States on the identical charges contained in the present libel. The present claimant, on the 10th of July last, appeared in said cause and filed his claim therein to the said vessel, her tackle, &c., as owner, and to her cargo "*as owner, as common carrier thereof.*" The plaintiff filed exceptions on the 12th of July to the averments in the claim of ownership of the vessel or cargo by the claimant, Lake, and the cause has remained in court not further proceeded upon by either party on either of those issues in that suit, and no other issue to the libel was made by the claimant.

The exception to the claim was authorized by rule 96 of this court, and being acquiesced in by the claimant for more than four days after they were interposed, the plaintiff would have a right to an order disallowing the claim as filed. If, then, a claim may not be regarded equivalent to an answer, the libel would stand unreplied to, and, in that state, could afford no bar to a new action for the same cause. But if, in correct pleading, the claim takes a general issue to the libel and effects a *lis pendens* between the same parties on the same cause of action, the defendant cannot avail himself of that objection under the general issue in this after action without pleading specially the matter of defence in abatement or bar. (1 Chitty Pl., 443; Gould Pl., ch. 6, 122; Percival *vs.* Hickey, 18 Johns' R., 257; Haight *vs.* Holly, 3 Wend., 358.) The abolition of special pleading by the State (Code, 122, sec. 140) does not affect proceedings in the federal courts. Their practice is governed by their own stated rules or by the common law, (21 Howard R., rule 3.) The evidence, therefore, offered by the United States under this issue, in the present suit, is legally admissible, the same as if no former action had been instituted.

The main stress of discussion between the respective counsel related to the character and effect of indirect or circumstancial evidence offered by the United States in support of the action. The libellants claimed that the proofs raised a

reasonable suspicion that the voyage intended by the vessel was an illicit one and in violation of the acts of Congress referred to, and were sufficient to compel the condemnation of the vessel and cargo, unless such *suspicions* were overborne and repelled by clear exculpatory evidence on the part of the claimant, and also that the claimant had no competent authority to defend the cargo, and that it must be condemned though the vessel should be acquitted.

The second point as to the capacity of a carrier to appear and defend with the right of *quasi* owner is merely formal, and should have been raised by exceptions or motion to exclude his claim. After notice of trial to him by the libellants and bringing the cause to hearing upon such claim as being a proper answer, the court will not give any effect to suggestions at hearing upon merits, that the defence by claim alone is informal or inadequate to resist the action. But it has been repeatedly held in this court that a common carrier is authorized to appear in admiralty suits for, and defend property intrusted to him in that capacity against possessory actions seeking to take it from him; or to maintain actions himself in that right to reclaim property of which he has been wrongly deprived by others. (Hovey *vs.* Steamer Sarah E. Brown, 24 Decisions, 39 MSS.; Collis *et al. vs.* Schooner Coernine, *ibid.*, 41.)

The position taken by the claimant on the merits is, that the libellants furnish no further proof implicating the vessel and cargo in the offence charged in the libel than what is to be legally inferred from her outfit and destination; that although those facts are competent testimony, yet the proof being entirely circumstantial and inferential, the settled rule of law is, that its bearing and import must be inconsistent with an honest voyage and innocent purpose in order to authorize a condemnation of the vessel or cargo. If the testimony is alike consistent with a lawful intent in the employment of the vessel and her lading, then, it is insisted, the conclusion from it must be in favor of the innocency of the adventure, and not against it. That is, that the same principle of construction applies to circumstantial and indirect evidence alike, whether it is used to convict a person of a crime, or a violation of positive law which works a penalty or forfeiture of property only.

This is deemed by the defence on the present issue a fundamental doctrine in this class of prosecutions. The point of law being put forward so prominently in the case, it is proper to consider the question preliminarily to an examination of the facts in evidence to criminate the voyage.

Evidence was offered by the libellants on the hearing with a view to two ends: first, to satisfy the court there was *probable cause* existing for her arrest when the vessel was seized, entitling the collector to a certificate for his protection for the seizure; and second, to show grounds of *suspicion* in relation to acts of the vessel and the persons connected with her, which would cast on the claimant the *onus* of proving the innocency of her employment.

The claimant insists that *suspicions* or *grounds of suspicion* touching the lawfulness of the voyage contemplated by the vessel can no way affect her unless founded on facts which are inconsistent with the integrity of the voyage to be entered upon, and sufficient, affirmatively, and of themselves, to authorize her condemnation for the offence alleged against her. The rule of evidence applicable to criminal charges is invoked in support of this position, and in confirmation of that rule a decision rendered by the late Judge Ingersoll in a cause tried in the district of Connecticut upon a libel of information against a vessel seized and prosecuted in that district for violation of the acts of Congress of March 22, 1794, and April 20, 1818, under circumstances very analogous to this cause, is claimed to be a direct and authoritative decision on the very point.

The court discussed the question of law and fact presented in the case very minutely, and adopted with strong emphasis, as a rule governing the action, the principle that, in investigations into infractions of criminal or penal laws, the government are to supply evidence against the accused which leaves no reasonable doubt on the mind of his guilt. That there can be no presumption raised against him primarily; on the contrary, every presumption of innocence is to be extended to him, with full effect, until rebutted by clear and satisfactory proof on the part of the accusers; and the court considered the case of the U. S. *vs.* The ship Emily and brig Caroline, (9 Wheat., 381,)

to have declared that doctrine in relation to prosecutions for violations of the slave acts. The decision of the district court is supported at great length with the reasoning of the judge upon the circumstances in evidence before him, and resulted in his pronouncing the peremptory character of that rule of evidence as applicable to and controlling the case on hearing. That decision and opinion is strongly pertinent to this case and entitled to high respect in this court; and on the assumption that the rule of evidence was accurately stated by the court, I see no occasion for dissenting from or examining the conclusions drawn by him from the facts proved on that hearing. But, in my opinion, overdue weight was attributed to the supposed analogy between prohibited offences subject to indictment and punishable criminally, and those which carry with them only pecuniary penalties or a forfeiture of property, because of a *purpose* and *preparation* to perpetrate forbidden acts without any overt ones of criminality having been committed in execution of the purpose. That distinction is plainly marked in the reasoning of the Supreme Court in the case of the Emily and Caroline, relied upon as sustaining the decision of the district court. The language of the Supreme Court, cited in the district court, is evidently misapprehended, as declaring "that the government must prove the intention or purpose for which the vessel is fitted out so as to leave no reasonable doubt as to the object," because no question was raised on that point; and it was without any specification of the source of the evidence, or the particulars of which it was composed. And it was truly declared by the Supreme Court to have showed "conclusively and beyond the possibility of doubt that both vessels were fitting out for the slave trade." There was, accordingly, nothing before the Supreme Court calling for an exposition of the order or quality of proofs required to make out the forbidden purpose, or to denote that the government was under the necessity on its side to establish a cause of forfeiture clear of doubt, or else fail in its prosecution. The evidence also (to which the court adverted) came, in part, from the claimants, and no uncertainty was suggested as to its fulness and sufficiency to authorize the judgment given. The general doctrine of the case of the United States

vs. The Emily and Caroline are reaffirmed by the court with a clearer illustration of its principles, (U. S. *vs.* The Plattsburg, 10 Wheat., 141, and 12 Wheat., 472, 473; U. S. *vs.* Gooding.) In the latter (page 473) the court declare "that any *preparations* for a slave voyage which clearly manifest or accompany the illegal intent, even though (the preparations) be incomplete and imperfect, and *before the departure of the vessel from port*, constitute a fitting out within the purview of the statute." This is without any indication as to the source from which the testimony is derived, or intimation that this class of actions is exempt from the principle ordinarily applied in cases standing in doubt upon the proofs, or accompanied by circumstances calculated to excite suspicions, when the party pursued is in possession of evidence which might dispel all uncertainty, or is of a superior and more satisfactory character than that which he does offer, that then the presumption shall lie against him and not in his favor upon such ambiguity or defect of testimony. Starkie gives the theory of that rule in this language: "A party in omitting to produce that evidence in elucidation of the subject-matter in dispute, which is within his power, and which rests peculiarly within his own knowledge, frequently affords occasions for strong presumptions against him, since it raises a *strong suspicion* that such evidence, if adduced, would operate to his prejudice." (1 Starkie Ev., 34, 35, sec. 16; 1 Chitty Cr. Law, 566; Taylor *vs.* Riggs, 1 Peters' R., 596; Roscoe Cr. Ev., 14.) And the force of circumstances is augmented whenever the party attempts no explanation of facts he may reasonably be presumed to be able to explain. (Wills on Circumstantial Evidence, 86; 25 Law Library, 46.)

So, also, the doctrine is clearly settled, that in prosecutions for penalties or forfeitures, because of infractions of penal laws, evidence less than what would amount *to probable cause*, and which would only be reasonable grounds of *suspicion* against the party or property proceeded against, is competent and pertinent proof upon which such forfeiture may be adjudged, if not satisfactorily contradicted or explained by countervailing proofs. (Murray *vs.* The Charming Betsey, 2 Cranch, 122; Maley *vs.* Shattuck, 3 Cranch, 488; Locke *vs.* The

United States, 7 Cranch, 339; 5 Wheat., 338; The Joséfa Segunda; The Catharine, 2 Paine, C. C. R., 747; The U. S. *vs.* The bark Laurens, Scrap Book, p. 158, in this court.)

These doctrines, so authenticated, are ample, without further references, to evince that the rule, as applied by the district court of Connecticut, transcends the requirements of law, and cannot be safely followed in disposing of the questions presented in this cause. There is a clear recognition in these decisions that, in actions of this class, the government is not restricted to proof of positive facts in laying a foundation for a presumption or inference that acts have been done in violation of law, but they may invoke circumstances calculated to raise suspicions that the purpose of mind or matter inducing the acts performed were illicit, which suspicions must avail as convicting evidence, unless countervailed or explained by proofs in the power of the claimant to furnish. Moreover, there is no department of jurisprudence more justly entitled to assimilate to itself the expansive properties of the common law than the law of evidence to be used as an instrument to detect and apply the actual truth of events to the ever varying aspects and exigencies of the business of life. Science, arts, experience, and the usages growing up with or employed in perfecting or managing trade, manufactures, productions, or the ramified operations of interchange of commodities, are from time to time unfolding strong and clear lights upon subjects once veiled in obscurity, and, in my opinion, the law can rightfully and, in the exercise of its high functions, should freely employ these instrumentalities in searching for and applying their teachings in all controversies in respect to rights or liabilities between man and man or governments and individuals. In the earlier seizures and prosecutions under the slave acts, vessels employed in the trade were found fitted out with arrangements so manifestly designed for that business, that the circumstantial proofs furnished by their preparations and equipment were nearly equivalent to positive testimony. The species of indirect or circumstantial proofs of that order, and then generally regarded as necessary to a conviction, were made public law by the treaty between England and Spain, so far as those high contracting parties were

concerned, and were generally acquiesced in by courts of the United States as laying down a safe rule of evidence. (The Butterfly, district court, southern district, New York, December 6, 1840.) It soon grew almost into the course of the courts to look for and demand that extreme force of circumstantial evidence to inflict the condemnation of a vessel upon presumptive proofs alone. Very soon slave traders discarded sets of manacles as part of their preparation, a slave deck was no longer found laid in the vessel or prepared for putting down; she exposed no longer an extraordinary supply of provisions, medicines or equipments specially adapted to the use of slaves, (or other conveniences, except perhaps than large supplies of water or water casks,) peculiar to the trade, on examination of the ship, or a mere inspection of her outfit to become very forcible evidence of her business and destination. For years past these insignia of slavers, except supplies of water, have disappeared from vessels detected in the trade and laden with slaves on actual transportation, and it has become notorious, from publications of writers thoroughly conversant with the course of the business, from proofs in courts of justice on the trial of vessels seized for violations of the laws, from public documents and the decisions in cases of the arrest of vessels for the offence, that slaving vessels are now employed in the trade, fitted and cleared at ports abroad and in this country openly, with the appearances of lawful traders, carrying substantially like cargoes and equipments as those which pursue a lawful trade upon the coast of Africa; and that on arrival out to the point where slave cargoes are collected, the ship is, impromptu, put in a state to receive their victims on board, and is thus enabled, often in one hour's time, to become transmuted from the fitment and aspect of an honest trader to a slaver under way, laden with hundreds of human beings on transportation to foreign markets as merchandise. (Canot's Narrative of the Slave Trade; Lt. Foster's Notes on Africa, Exec. Doc., 2d sess. 28th Cong., No. 148; The United States *vs.* The Butterfly, U. S. dist. court, MSS. 1840; The U. States *vs.* The bark Laurens; also in this court Scrap Book, 158, July, 1849.) This new practice of discarding from the preparation of slaving vessels most of the insignia of their

real design, and, on the contrary, giving them the semblance of lawful traders, yet possessing the faculty of using at once, in their condition, the means necessary to accomplish their nefarious calling, appeals impressively to justice to put in active service all the capabilities of the law of evidence in order to detect and thwart the imposition and crimes attempted to be carried out.

Accordingly, in support and accordance with the doctrine that when the evidence on the part of the government creates *strong suspicions* or *well-grounded suspicions* that the vessel seized as being employed in the slave trade was fitted out or fitting out for that purpose, the decisions in this court have been uniform and distinct that such evidence must produce her conviction and condemnation, unless rebutted by clear and satisfactory proofs on the part of the claimants showing her voyage to be a lawful one. This doctrine was largely commented on in the case of The United States *vs.* The bark Laurens, in 1849, before cited, and authorities and reasons in support of it were adduced, (Scrap Book, 158.) The court, in its decision, declared that the government having shown a *strong suspicion* that the vessel to be despatched on a slaving voyage, and that the claimants were knowingly concerned in said voyage, and they having produced no proof to the contrary, the vessel and cargo must be condemned as forfeited. Nine years after, the circuit court enforced the same principle in the cases of the Butterfly and Catharine, (2 Paine's R., 747.) The same rule of evidence was applied by Judge Hall, sitting in this court, in the case of The United States *vs.* The bark Orion, (Scrap Book, 604,) and the vessel was condemned to forfeiture on *suspicions* of culpability, not obviated by exculpatory proofs on the part of the claimant. The doctrine adopted by Judge Ingersoll, in the Connecticut district, has only been admitted here in cases where the reliable proofs on the part of the prosecution were wholly circumstantial and indirect, and amounted to no more than that the outfit and preparation of the vessel seized was of a nature to qualify her for an honest voyage, or to be readily perverted to an illicit one. Then the principle prevailed in favor of the party ac-

cused, that if no preponderance of proofs existed in the cause either way the presumption of innocence should inure to the acquittal of vessel and cargo. (The U. States *vs.* The brig Susan, 20 vol. dist. court, MSS. Decisions 28, (1852) The U. States *vs.* The bark Panchita, 22 *ibid.*, 461; The U. S. *vs.* The brig Ellen, *ibid.*, vol. 23, p. 48½; *ib.*, U. S. *vs.* The bark Chancellor, vol. 23, p. 145.) Notwithstanding such acquittals, it was quite usual that, in view of the facts before the seizing officer at the time of arrest, the court would order certificates of reasonable or probable cause of seizure in protection of the official acts done *ex parte* on such evidence. This exposition of the law of evidence applicable to the cause on prosecution leads to the consideration of the proofs as presented to the court.

It is not controverted, on the part of the claimant, that the vessel is of the class and general equipment of those which are notoriously employed in the slave trade, nor that the cargo on board her is essentially composed of articles sent to the coast of Africa with slave vessels, and furnishes a means of purchasing slaves on the coast. But it is insisted, upon the evidence and facts undisputed in regard to the trade and commerce of the country, that vessels and cargoes every way similar to the one seized in this case are constantly employed in carrying on a lawful trade to a large value by merchants in this country with Africa. That every article in the vessel or on the manifest was adapted in that market to a legitimate trade in the natural products of that country—palm oil, hides, gold dust, ivory—and large quantities of which are there obtained constantly for importation into this country and others in the ordinary modes of purchase and exchange. The claimant also gives forcible proofs conducing to show that the manifest of the vessel found with her, or offered for her clearance, comports in all important particulars with those sent out without objection at our custom-houses by traders and houses here of unquestioned character and integrity, and are of themselves staple articles of use and consumption by the inhabitants of that country. It is claimed that these proofs place the present expedition on equal footing with the most unexceptionable commercial adventurers to that region, and that in presump-

tion of law the voyage must be held a lawful one on that state of facts, unless the government has produced on its part other and overpowering proofs showing irrefragably the voyage was of a contrary character and purpose. The remarks already made indicate the judgment of the court, that accepting the proposition of the claimant that the direct circumstances in the case, (that is,) if the implication and inference legally arising from the preparation and destination alone of the vessel are in equipoise, and in that condition would not authorize the conviction and forfeiture of vessel or cargo, still, that the conclusion drawn from such facts by the claimant is not justified by law, and that it is not necessary for the government to produce any extraordinary force of proofs to change such balance in the evidence. Any class of facts or circumstances, or a single one affording reasons for a strong presumption that the voyage was put on foot for the purpose of taking and carrying slaves against the provisions of the statutes referred to, will effectually change the supposed equilibrium in the evidence, and cast upon the claimant the burden of proving that the preparation and acts done towards the voyage were honest aud lawful in their intent and character.

The circumstances offered in proof by the government to this end are therefore to be examined and passed upon. Outside of intrinsic proofs derived from the items of lading, the interior arrangements and destination of the vessel, her officers and crew, and the marked facility with which she might drop her honest mercantile semblance, and be clothed with every necessary means of taking on board and transporting a cargo of slaves, there are several particulars in proof conducing to denote a concealed and culpable purpose in arranging and setting forward the enterprise, and, in my opinion, sufficiently suspicious, connected with the fitments and destination of the vessel, to demand clearer and fuller proofs from the claimant than have been given respecting the purpose of the voyage. The statutes upon which the libel of information is founded make the *purpose* and *intent* with which the vessel is fitted out the gravamen of the misfeasance interdicted. The acts done

are not specifically offences of themselves, but are so under the statutes, and become criminating to the accused only in so far as they manifest and establish that the prohibited *purpose* actuated him in setting on foot the adventure. (12 Wheat., 460; 14 Peters, 475; the United States *vs.* Morris, 2 Paine C. C. R.; 2 Cowan and Hill's Notes to Phillips's Ev., 294, 298.)

I do not, however, consider it important to proceed to a labored discussion upon the details of the evidence offered to that point in order to evince the justness of the conclusions drawn from the whole in this decision. It will be sufficient to indicate the facts standing most prominently upon the proofs, and point out the inferences reasonably to be deduced from them in their relation to the preparation and employment of the bark for the voyage it was designed she should undertake, and whether such a state of the undertaking is thus presented as to cast the responsibility upon the claimant to furnish satisfactory evidence that the enterprise was an innocent and lawful one. Looking at the vessel on her arrival in this port in May last as being the *bona fide* property of owners resident in Baltimore, and seeking a market here, the inquiry is pertinent and material whether the ownership set up by the claimant was acquired in an open mercantile manner; or if it is clouded with circumstances calculated to raise a persuasion that the transaction was covert and unreal, with the purpose among the parties to it to falsify the true object of the supposed sale and mislead inquiries as to those under whose auspices it was conducted.

The bark arrived at this port, from Havana, May 17, 1860, with a cargo of spirits, sugar, &c., consigned from persons at that place to Antonio Ross, Robert & Williams, of New York. She was, within one week, sold to the present claimant for a consideration of $14,000 cash, and there is strong probable cause for believing that part of her lading brought from Cuba was transshipped to and composed a considerable portion of her cargo for the voyage in question, shipped in the name of José Hernandez, the two being strikingly correspondent in kind. The claimant omits to obtain from Ross and Williams, such consignees of the inward cargo, or Hernandez, the shipper

of the present outward one, any proofs or certificate whether they are not the same merchandise, and continued in this voyage on a common account between themselves or with the master or his agents.

The claimant declared in his affidavit, read in court on an incidental motion in the cause, that he had chartered the vessel for the voyage to the shipper of the cargo. The shipper's manifest of cargo is sworn to by him personally before a deputy collector of this port on the 3d of July, 1860. The vessel and cargo were first seized on the 3d of July last, and a libel demanding their forfeiture was filed on the same day. On the 6th, Charles P. Lake alone intervened and claimed the vessel as sole owner, and also claimed the cargo as common carrier. The last part of the claim is interlined in apparently a hurried and careless manner in the printed form of the claim. His competency to intervene in the cause as owner or possessor of the vessel or cargo was excepted to by the plaintiff on the 12th of July, and the issue thus made stands undisposed of on the record. He has interposed no further answer to that action for either the vessel or her cargo. On the first of October thereafter the vessel and cargo were again seized and libelled in this action for the same cause. Charles P. Lake alone again intervened by the same form of claim as owner of the vessel and carrier of the cargo, and filed such claim October 17, and on the 17th of November, 1860, filed an answer to this libel in the same capacity. On the trial of the cause no testimony was given respecting the ownership or possession of the cargo further than that it was laden on the bark by stevedores at the charge of the vessel.

Inquiry was made on the trial of witnesses for an identification of Charles P. Lake, whether he was a merchant or even resident of the city of New York or Brooklyn, or a person known in either vicinity. No person testified to any knowledge of him except the broker who conducted for him the business of entering and clearing the vessel in his behalf at the custom-house, and he possessed no other knowledge of his residence than having met him in the streets of this city and seen him at the custom-house. It was also shown on the trial by the plaintiffs that Lake could not be found to serve with a

subpœna to appear as a witness at this trial, and his counsel being appealed to to produce him in court or state his residence or where he may now be found, made no disclosure or direct response to that demand. He had asserted in an affidavit that he had chartered the vessel for the voyage, but on the trial does not produce the charter-party or paper to whom or for what voyage it was given, nor how he was carrier of the cargo. The shipper of the cargo, though attesting to the manifest in this port, interposes no claim for it, nor does he give evidence in court respecting its present ownership or consignment. Without clear proof of the fact, it is not to be supposed the owner of the vessel chartered is to use her in his own name and right as carrier of her cargo.

Smith, who acted as Lake's broker in transactions at the custom-house in relation to this voyage and others to the coast of Africa for other parties, is proved by DeGraw, a clearance clerk in the custom-house, to have declared to him the same day the vessel was seized in this cause that he was about to clear another slaver for the coast of Africa, and that was said an hour or two before a clearance of the Kate on her last voyage was applied for and refused at the custom-house. The same witness also swears to declarations made by Smith to him in the custom-house in reference to slaving vessels and to his having obtained facilities in their clearance by means of gratuities to clerks in money. The testimony was objected to by the claimant as incompetent, because Smith could not by his declarations, apart from the claimant, affect the conduct or interests of the latter, and that Smith, moreover, on re-examination, explicitly contradicted the statement of DeGraw that he ever proffered money to the latter as an inducement to him to render any improper services in the custom-house. He admits he did from time to time let DeGraw and other custom-house clerks have sums of money, which he loaned them without expectation of a return of such moneys, as an acknowledgment for facilities accorded him there. Admitting that the testimony stands balanced as to the object and purpose of Smith in giving DeGraw $20 cash on the day of the first clearance of the Kate at the custom-house, and the promise to him of after donations for like services there, yet Smith was at the time

acting as agent of the claimant, and, so far as his conduct was in furtherance of that agency, his declarations concomitant upon the acts would be admissible evidence against the claimant, and his expectation of receiving facilities from officials acting in the custom-house, in consideration of (what he terms) gratuitous loans of money made by him to them, avowed on his examination in court, casts a shadow over the integrity of his dealings in these matters which will prevent the court allowing credit to his oath in preference to that of McGraw in relation to the facts and declarations between them in the custom-house.

Those facts and circumstances raise a strong suspicion that the claimant, Lake, was not a resident merchant in this place; or that he was, in fact, the manager of the voyage on foot on this occasion, and the law justly requires he should relieve himself from that suspicion, and prove that he was *bona fide* owner of the vessel, and had some correspondence or acquaintance on the coast of Africa, through which he was enabled to conduct, and was conducting, the business within the place of the voyage declared upon the ship's papers, and that the proceeding was not a color and subterfuge to promote an illicit enterprise in favor of some charterer or other persons whose connexion with it are concealed.

The master of the vessel and his first mate were foreigners, and there is evidence that other members of the crew were apparently such also. No proof is given of the character or former employment of the master—he has not been presented by the claimant as a witness, nor could he be found by the libellants and subpœnaed on their part for this trial. His instructions for the voyage have not been given in evidence by the claimant, and, indeed, no other important fact has been proved under the claim than that the cargo is one which corresponds in character with those employed in lawful trade on the coast. It must palpably be in the power of the claimant, if owner of the vessel, to supply full evidence in refutation of these suspicions, and to show the vessel was employed in an honest course of business, and I think his failure to do so leaves the case subject to strong presumption against the integrity of the voyage.

Another circumstance appeared upon the proofs in the cause calculated further to fasten upon the proceedings of the vessel in entering upon the voyage marks of secrecy and deception in the composition of the ship's company, which demands a full and satisfactory explanation from the claimant.

The vessel was got under way to sea from her place of lading in her harbor, and her master procured a steam-tug here to put him on board of her on her way out. He then followed her down the bay, and was placed on board by the tug. An individual by the name of Henrico Da Costa went off on the tug from the city at the same time with the master of the vessel, to be placed on board also after she was outside of the narrows. The baggage of Da Costa was in the cabin of the vessel going out to sea with her. The master and Da Costa, after the vessel was seized, affected to be strangers to each other, and avoided all open communications together during their return to the city, but the master took charge of the baggage of Da Costa, on the return of the Kate under seizure, and had delivered it to him from the marshal's possession some days afterwards. But the evidence was strong that the two were acquainted, and acting under a mutual understanding, and leaves no reasonable doubt that they were in concert in the voyage. Da Costa, when arrested, denied his identity, and assumed a different name. It was clearly established in the course of the proceedings before the court on his arrest that he was really Da Costa, and also shown on this trial that he had been previously arrested and indicted in this court for being engaged in the slave trade on a vessel fitted out and sent from this port, which prosecution is still pending. Neither Da Costa nor the master were called by the claimant to testify in this cause and prove the innocency of their connexion with the vessel on this intended voyage, or that the employment of the vessel was a lawful one. It was the business of the claimant to explain and clear away those dubious circumstances by the testimony of those parties who, in presumption of law, were at his call either to be examined on depositions or openly in court. Failing to do this, the claimant is rightfully subject to the legal consequence resulting from his omission to lay such excusatory or explanatory testimony before

the court, which is to turn the presumption in support of the charge in the libel, instead of in favor of the innocency of the voyage, to one against its lawfulness.

Accordingly, those suspicions hanging over the enterprise, unexplained and unaccounted for by the claimant, with the evidence in his hands or at his command, the supposed equilibrium of proofs as to the nature and purpose of the voyage resting on the force and effects of the ordinary presumptions is reversed, and the claimant is under the necessity of supporting, by superior proofs on his side, the lawfulness and integrity of the preparation of the vessel and of her employment on the intended voyage, or the judgment of the court must be for the liabellants and against the defence.

From a careful consideration of the evidence and principles of law before me applicable to the case, I am of opinion that the libellants are entitled to the condemnation and sale of the vessel and cargo, and direct a decree to be entered to that end.

The following principles of law and matters in proof are recognized by the court as calling for and supporting this decision:

1. The acts of Congress of March 22, 1794, and April 20, 1818, inhibited the preparation and employment of the vessel and cargo in the manner and with the intent and purpose charged in the libel of information, under the penalty of forfeiture of both.

2. Admitting it to be true to a general intent, as contended for by the claimant, that the evidence derived from the preparation, destination, and lading of the vessel is of itself equally consistent with a lawful and innocent voyage to the coast of Africa, as for an illicit and prohibited one, the court is not bound to apply the same rule of presumption to such evidence as obtains on indictments for crimes and misdemeanors, and to declare there must be a clear preponderance in the proofs in favor of the United States to justify the conviction of the vessel and cargo.

3. Without taking into account the capacity of common law rules of evidence to expand and become adapted to the changeable events of business and life, and to have at one

period a force and significancy beyond what may have appertained to them at a different period, and so, as in this instance, under the proofs and notoriety of the illicit uses to which vessels fitted out as this one was on this occasion, to determine that the claimant was bound to show affirmatively that her employment was to be a legal and honest one. I hold it competent for the United States to give evidence that there were circumstances suspicious in their character attendant upon the preparation and despatch of this vessel on her proposed voyage, and that evidence of that description would rightfully lead to the condemnation of the vessel and cargo, unless repelled by preponderating evidence on the part of the claimant clearing the undertaking from such suspicions.

4. *Suspicions* of themselves are less than proof in support of issues of fact; nevertheless, in prosecuting for penalties or forfeitures imposed by statute, evidence raising strong suspicions against the party accused are admissible as circumstantial proof, and cast on him the burden of explaining or removing such suspicions, or have them weigh against him as evidence on the issue.

5. The claimant having failed to produce evidence that he is or has been engaged in trade or commerce; that he is *bona fide* owner in his own right of this vessel; that she was fitted out to perform the voyage under his directions or that of the charterer, as also who the real charterer is, and under what instructions the vessel was to sail and perform her voyage, and in what connexion with the vessel or the purposes of her voyage, Henrico De Costa was to go out in her to the coast of Africa, or elsewhere, and to furnish proof, by examination of the master or supercargo or other agent of the vessel, that her preparation and purpose for the voyage was lawful and honest. I think his omission to furnish evidence to these particulars and others of like character which, in presumption of law, it would lie in his power to produce, leaves his claim unsupported in this cause, and entitled the libellants to a decree of condemnation of the vessel and cargo.

6. As to the objection in point of form (by the claimant) to a recovery in the present suit, because of a prior one for the

same cause of action yet remaining undetermined, the principle is, that a defendant cannot, under the general issue, give evidence in bar of an action on trial, that a prior one is pending for the same cause, but must plead the defence specially.